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PART IV

Section I-C

NOTIFICATIONS, RULES, ORDERS, Etc., ISSUED UNDER CENTRAL ACTS AND ORDINANCES WHICH APPLY TO MYSORE.

NOTIFICATION.

No. L. 2628—L.W. 190-50-2, dated Bangalore, 24th October 1950.

Ordered that the following Notification No. S.R.O. 386, dated th August 1950, of the Government of India, Ministry of Labour, blishing the award of the All-India Industrial Tribunal (Bank isputes) in the matter of an industrial dispute, regarding the pay ales, dearness allowance, terms and conditions of employment, etc., workmen in certain banking companies, be republished in the *ysore Gazette*, for general information.

By Order of
His Highness the Maharaja;
B. S. PUTTASWAMY,
Secretary to Government,
Law Department.

MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 12th August 1950

S.R.O. 386.—In pursuance of section 17 of the Industrial Disputes Act, 47 (XIV of 1947), the Central Government is pleased to publish the following ard of the All-India Industrial Tribunal (Bank Disputes) in the matter of

an industrial dispute regarding the pay scales, dearness allowance, terms a conditions of employment, etc., of workmen in certain banking companies:

BEFORE THE ALL-INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES), BOMBAY

ADJUDICATION

BETWEEN

The banking companies mentioned in Schedule I to the orders of t Ministry of Labour No. LR-2 (212), dated the 13th June 19 and 28th September 1949 [1].

AND

Their workmen

In the matter of an industrial dispute, *re*: the employees' pay scal dearness allowance, terms and conditions of their employment, e

Present:

Mr. K. C. Sen, *Chairman*,

Mr. J. N. Majumdar, *Member*,

Mr. N. Chandrasekhara Aiyar, *Member*.

Appearances:

(As in Appendix V)

AWARD.

CHAPTER I

INTRODUCTORY.

By a Notification No. LR 2 (205), dated the 13th June 1949 the Governme of India in the Ministry of Labour, in exercise of the powers conferred by sectio 7 of the Industrial Disputes Act, 1947 (XIV of 1947), constituted this Tribun for the adjudication of industrial disputes in banking companies. The Tribun consisted of :—

1. Mr. K. C. Sen, President, Industrial Court, Bombay and retired Judge of the High Court of Judicature, Bombay .. .. Chairman.
2. Mr. S. P. Varma, Chairman, Industrial Tribunal, Dhanbad and retired Judge of the High Court of Judicature, Patna .. .. Member.
3. Mr. J. N. Majumdar, retired Judge of the High Court of Judicature, Calcutta .. .. .. Member.

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1. *Vide* Appendix I.

436

A "banking company" was defined in the Industrial Disputes (Banking and Insurance Companies) Ordinance 1949 (VI of 1949 now replaced by Act LIVof 1949)[1] as a banking company as defined in section 5 of the Banking Companies Act (X of 1949) having branches or other establishments in more than one Province, and as including the Imperial Bank of India.

2. By a further Notification No. LR-60 (47), dated the 24th August 1949, Mr. N. Chandrasekhara Aiyar, retired Judge of the High Court of Judicature, Madras was appointed as a member of the Tribunal in place of Mr. S. P. Varma whose services had ceased to be available to the Tribunal, Mr. Aiyar joined the Tribunal on the 12th September 1949. His services were, however, not available from the afternoon of the 23rd November 1949 to the forenoon of the 20th February 1950, during which period his services were placed at the disposal of the Ministry of External Affairs as a member of the Indo-Pakistan Boundary Disputes Tribunal.

3. In exercise of the powers conferred by clause (*c*) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947) the industrial disputes that had arisen between 82 scheduled and 88 non-scheduled banking companies and their employees were referred for adjudication to this Tribunal by the Government of India in the Ministry of Labour by their order No. LR-2 (212), dated the 13th June 1949[1]. The names of the banking companies which are parties to the disputes and the subject matters of the said disputes are mentioned in schedule I and II respectively to the said order. By a further Notification No. LR-2 (212), dated the 12th August 1949[1] the words "or is apprehended" were inserted after the words "whereas an industrial dispute has arisen" occurring in the said order of reference. By another Notification No. LR-2 (272), dated the 6th February 1950[1] the name of "Habib Bank, Limited" was deleted from Group C of the scheduled banks and inserted in Group B of such banks in schedule I to the said Government order. By order No. LR-2 (212), dated the 28th September 1949[1] the industrial disputes between 1 scheduled and 34 non-scheduled banking companies and their employees were referred to this Tribunal. The Ministry of Labour by their letter No. LR-2 (212), dated the 13th October 1949 explained that the reference was found necessary since a large number of banks coming within the scope of the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949 (VI of 1949, now replaced by Act LIV of 1949) had been excluded from schedule I to the first order of reference. It was further stated in the said letter that a fairly large number of banks outside the scope of the Ordinance had erroneously been included in the former reference and that it would be open to the Tribunal to exclude such banks from the operation of its award.

4. By a later order, No. LR-2 (248), dated the 5th January 1950, the industrial disputes between 5 scheduled banking companies and their employees in the former State of Baroda, now merged in the State of Bombay, were also referred to this Tribunal. Schedule II to the said order contained the 17 demands which formed the subject matter of the said dispute. By another order, No. LR-2 (252), dated the 1st February 1950, an industrial dispute between the Imperial Bank of India (Madras Circle) and their employees was also referred to the Tribunal for adjudication.

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1. *Vide* Appendix I.

5. Besides the above, certain industrial disputes relating to banking companies having branches in more than one State were pending before the State Industrial Tribunals. The proceedings in respect of those disputes abated under sub-section 5 of the Industrial disputes (Banking and Insurance Companies) Ordinance, 1949 (VI of 1949). The Ministry of Labour, by their letter No. LR-2(212), dated the 15th July 1949 directed all the State Governments except Assam, Bihar, C.P. and Berar and Delhi to forward to this Tribunal the records of such industrial disputes. The records of such pending disputes were received from various States but the Tribunal wanted a regular order of reference in writing from the Central Government in respect of such matters in view of sub-section (2) of section 5 of the said Ordinance. Accordingly separate references regarding such matters pending in the States of Bombay, Delhi, the U.P. and West Bengal were made by the Government of India.

6. Separate awards have been made by the Tribunal on the references regarding the disputes between the banks in Baroda and the Imperial Bank of India (Madras Circle) and their respective employees, as well as the disputes in the States of Bombay, Delhi, the U.P. and West Bengal which were pending before the respective State Tribunals.

7. On the 4th July 1949 the Chairman convened an informal meeting of the representatives of banks situated in the city of Bombay and their employees in order to prepare a tentative programme for the conduct of the proceedings. Representatives of 17 banks and of the Indian Banks Association were present at the said meeting, and bank employees of Bombay were represented by the General Secretary of the Federation of Bank Employees, Bombay. At the said meeting it was decided that notices to employees should be given through banks and unions asking the employees to state particulars of their demands and the grounds on which they were based. It was also decided that the statements of claims of the employees or unions should be sent to the Tribunal and the banks concerned by the 6th August 1949 and that the banks should send their written statements in reply to the demands to the Tribunal and the employees or unions concerned by the 3rd September 1949. The first hearing of the matter was also fixed in Bombay for the 12th September 1949.

8. Notices were, accordingly, issued from the 9th to the 12th July 1949 to all the banks covered by Schedule I to the Government order No. LR-2 (212), dated the 13th June 1949 together with copies of a notice to be published for information of the employees of the banks concerned including their branches. Similar notices were issued on the 25th November 1949 to the banks covered by the reference, dated the 28th September 1949. By a separate circular, dated the 22nd November 1949 the banks were further directed to file affidavits to the effect that the instructions given by the Tribunal had been complied with, to which 65 banks replied in the affirmative. Separate notices were issued on the 8th July 1949 to 13 unions of bank employees whose names and addresses had been supplied to this Tribunal by the Ministry of Labour by a letter, dated the 15th June 1949.

9. In response to the above-mentioned notices, statements of claims were received from 290 unions and elected representatives of employees all over the country details of which are shown in the table given below :

State	Statement of claims submitted by :			
	Regional Unions*	Other Unions†	Elected representatives of employees	Total
Assam	..	1	..	1
Bihar	1	7	7	15
Bombay	4	6	37	47
Madhya Pradesh	..	..	31	31
Madras	..	6	56	62
Orissa	..	..	1	1
Punjab	..	2	12	14
The Uttar Pradesh	3	..	15	18
West Bengal	..	23	9	32
Delhi	..	4	8	12
Other areas	5	2	50	57
	13	51	226	290

* Regional Unions are unions organized on a regional basis irrespective of the banks in which the members are employed.

† Other unions are unions organized in each case by the employees of a particular bank.

A list of Unions referred to above has been given in Appendix II.

10. The following table gives the distribution of the statements of claims received from the employees of banks arranged according to the classification of banks adopted in the Government orders, dated the 13th June and the 28th September 1949.

Group	Number of banks
Scheduled :	
Group A	12
„ B	6
„ C	36
„ D	1
Non-scheduled :	
Group A	5
„ B	1
TOTAL	61

11. Written statements in reply to the demands made by the Union or representatives of employees were received from the following numbers of banks arranged by groups according to the Government orders referred to above.

Group	Number of banks
Scheduled :	
Group A	12
„ B	6
„ C	30
„ D	1
Non-scheduled :	
Group A	5
TOTAL	54

12. While the demands and written statements in reply were being received, demands for interim relief were pouring in from different parts of the country, one of the first to be received being one from the United Provinces Bank Employees' Union, Kanpur. There, on the 22nd May 1949, the workmen of most of the banks had served on their respective managements notices of a strike to be held on the 21st June 1949 in case the demands made by them were not conceded. Along with those demands the employees had also put forward a claim for interim relief. On the 17th and 18th June 1949 a conference was held at the instance of the Chief Labour Commissioner (Central) at Patna which was attended by representatives of the banks and the U.P. Bank Employees' Union.

13. The Central Government sent a copy of the report of the said conference to the Tribunal for information and such action as it might consider appropriate. In view of the urgency of the settlement of the said dispute the Tribunal heard the parties at Lucknow on the 4th and 5th August 1949 and gave its award regarding interim relief in respect of 24 banks on the 25th August 1949. By a second award, dated the 23rd September 1949, the employees of 12 banks which were not covered by the previous award were granted interim relief on the lines of the earlier award.

14. Applications for interim relief were also received from 20 unions of West Bengal, 3 of Madras, 2 of Bombay, 1 of Bihar and almost all the unions of Delhi and the Punjab. The Tribunal by three separate awards, dated the 17th October 1949, granted interim relief to the bank employees of the States of Bombay, Bihar and Delhi, and the Punjab. By two other awards, dated the 2nd December 1949 the bank employees in the States of Madras and West Bengal were also granted similar relief. By an award, dated the 21st February 1950 the scope of the interim relief award for the bank employees of the State of Bombay was extended to cover the employees of the Imperial Bank of India (Bombay Circle). An award was also made in terms of an agreement, dated the 21st February 1950 between the Indian Bank, Limited, Madras and its workmen in respect of certain categories of workmen.

15. Extracts and summaries of the awards regarding interim relief have been given in Appendix III.

16. The Tribunal commenced the hearing of the general issues on the 12th September 1949 in the Council Hall, Bombay. Representatives of 34 banks and 32 unions attended the said hearing.

17. The first item in Schedule II to the Government order No. LR-2 (212), dated the 13th June 1949 (to be referred to hereinafter as Schedule II) to be taken up for consideration was the classification of banks for the purposes of this adjudication and the classification of their branches (items 33 and 34 in Schedule II). After a few days' hearing, it was felt that in view of the large number of applications for interim relief still pending and of complaints regarding wrongful dismissal and other forms of victimization, it was necessary for the Tribunal to visit certain principal cities and dispose of as many of such applications as possible before reverting to the main adjudication proceedings. Accordingly the Tribunal decided to visit Delhi, Patna, Calcutta, Madras, Trivandrum and Bangalore. The question of interim relief to be granted to the employees in the State of Bombay was taken up for consideration on the 14th September 1949. At Delhi the Tribunal sat from the 19th to the 23rd September and heard arguments as to interim relief and as to 110 cases of

alleged victimization. The award as to interim relief was made on the 17th October 1949 and that as to victimization cases was made on the 19th January 1950.

18. At Patna the Tribunal held its sittings on the 26th September 1949. The Tribunal made its award regarding interim relief on the 17th October 1949 and its decisions regarding the cases of alleged victimization heard at Patna were included in its award regarding such cases arising in the States of Delhi and the Punjab.

19. At Calcutta the Tribunal sat from the 8th to the 17th October 1949. Claims for interim relief had been advanced on behalf of the workmen of 20 banking companies. The Tribunal by an award, dated the 2nd December 1949 laid down scales for interim relief for the workmen of the Imperial Bank of India and other banks having their headquarters or branches in West Bengal.

20. Cases of alleged victimization were also heard and an award in respect of them was made on the 5th January 1950.

21. At Madras the sittings of the Tribunal were held from the 27th October to the 3rd November 1949. As usual the principal question that was agitated by the employees was that of interim relief. The Tribunal made an award, dated the 2nd December 1949 relating to this demand.

22. The Tribunal by an award, dated the 4th November 1949 also gave its decisions in respect of 8 cases of alleged victimization heard during its stay at Madras.

23. At Trivandrum the Tribunal sat on the 8th and 9th November 1949. The non-scheduled banks of the West Coast had been asked to attend but they were not present. The representatives of the All-Travancore Bank Employees' Union, on behalf of the employees serving in the United State of Travancore and Cochin, filed a memorandum before the Tribunal.

24. At Bangalore the sittings of the Tribunal were held on the 14th and 15th November 1949. The question whether the Tribunal had jurisdiction over a bank or a branch thereof situated in a State which had acceded to India but had not been merged therein, was discussed at length. The decision of the Tribunal in respect of the said matter was incorporated in the interim relief award for Madras referred to above.

25. Sometimes before this the Tribunal had felt that too large a part of its time was being taken up by cases of alleged victimization, applications for retrenchment, etc., that were filed before it and that its main work, that of going into the general questions affecting the relationship between the management of banking companies and their employees, was being hampered and delayed. A suggestion was, therefore, made to the Central Government that single members of the Tribunal should be authorised to do this work by a suitable amendment or addition to the Industrial Disputes (Central) Rules 1947. In response to this suggestion the Industrial Tribunal (Procedure) Rules, 1949 were framed by Government. These rules will be found in Appendix IV. Accordingly a large number of cases and matters pending before the Tribunal were divided amongst the members for enquiry and report to the Tribunal; and the members of the Tribunal began to sit separately at different centres from the 3rd December 1949.

26. Before the Tribunal split up for separate hearings it had adopted the practice of allotting a few days at each place of its sitting for discussion of such general issues as the employees might be specially interested in. At certain places the employees, and at some places several of the banks as well, wanted that all the general issues should be discussed locally. On the Tribunal's pointing out that if this request was granted it would result in similar requests being made by employees at other places, which would involve not only a needless repetition of arguments but the proceedings being continued indefinitely, the employees agreed to the original programme as to the hearing of all the general issues at Bombay subject to the employees' representatives being paid by the banks their costs of travelling and of stay at Bombay. The Tribunal ordered such costs to be paid; and it moved the Central Government to make an express provision in the Industrial Disputes (Central) Rules, 1947 with regard to the Tribunal's power to award such costs. Accordingly rule 21-A was framed by the Central Government in exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947.[4]

27. The Members of the Tribunal sat separately at Bombay, Calcutta, Madras, Dehra Dun, Lucknow, Nagpur, Gauhati, Banaras and Mussoorie between the 3rd December 1949 and the end of July, 1950 and 442 cases of victimization and 16 cases of retirement were thus dealt with.

28. The Tribunal's award regarding cases of alleged victimization and orders on applications for retrenchment which have been made up to date (most of which have already been published) will be found reproduced in Appendix IX. We thought it expedient to adopt the policy of not entertaining such grievances or complaints as could be said to have arisen before the 1st January 1947. Certain applications of this nature came before the Tribunal very late; so we adopted the practice of not entertaining them after the 31st March 1950, unless the delay was explained to our satisfaction.

29. The second hearing of the general issues commenced at Bombay on the 16th January 1950 and concluded on the 3rd April 1950. Representatives of 55 banks and 48 unions attended the said proceedings.[5] The total number of days taken by the hearing of the general issues was 42. The hearing of questions relating to interim relief in the different states occupied in all 15 days. The hearing of cases of alleged victimization and applications for retrenchment took 102 days; the number of victimization cases disposed of up to date is 651; 16 applications for retrenchment have been disposed of and one such application is still pending. The hearing of matters which had been pending before Tribunals or Courts in the different States and which were referred to us took 9 days; and the hearing of disputes in the State of Baroda and the State of Saurashtra, which were also separately referred to us, occupied 3 days.

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4. *Vide* Appendix IV.
5. *Vide* Appendix V.

442

CHAPTER II

Certain Questions regarding Jurisdiction

30. At the commencement of our proceedings we were met with certain objections against our jurisdiction which were subsequently elaborated towards the end of the hearing at Bombay. The main part of those objections, however, came from Mr. A. C. Beynon, who represented certain Exchange Banks. They may be summarised as under:

(1) In certain banks and certain branches of some banks there is no existing dispute between the employers and the employees; with regard to such cases the statement appearing in the Government Order No. LR-2(212), dated the 13th June 1949 that "an industrial dispute has arisen" was not justified, and the Tribunal has no jurisdiction.

(2) As to the industrial disputes which are said to be "apprehended", it is doubtful whether the legislative provision regarding them is valid; but even if it be valid, the Tribunal must see (*a*) whether Government had materials before them suggesting that an industrial dispute might be apprehended and applied their minds to such materials before they made the declaration that such a dispute was apprehended, (*b*) whether the materials were such as to justify such apprehension and (*c*) whether even if these conditions were fulfilled the apprehension crystallised into an actual industrial dispute at the time of the hearing.

(3) The notification, dated the 12th August 1949 amending the order, dated the 13th June 1949, by inserting the words "or is apprehended" after the words "Whereas an industrial dispute has arisen" is bad in law and of no effect.

31. We proceed to deal with these objections in the same order. To take first the objection that in certain banks and branches there were in fact no disputes, this is undoubtedly true. The employees who sent the Tribunal particulars of their claims and those who appeared or sent their representatives before it did not represent the employees of all the banks and all the branches covered by the Government orders, dated the 13th June 1949 and the 28th September 1949. Some of the banks so covered, *e.g.*, the Comptoir National D'Escompte de Paris and the Netherlands Trading Society, appeared under protest and said that there were no disputes between them and their employees. In certain cases statements were received from certain employees claiming to represent all the employees in their banks, or particular branches thereof, to the effect that they had no differences with their employers; and certain banks filed affidavits about the non-existence of such differences or disputes so far as they were concerned. Reliance was placed in this connection on the case of the *Kandan Textiles Limited* v. *The Industrial Tribunal, Madras and others* decided by the High Court of Madras on the 26th August 1949. In that case the Government of Madras had referred an alleged dispute between the Kandan Textiles Limited and their workers to the Industrial Tribunal sitting at Madras for adjudication and the said Tribunal had made an award

and the Government had declared the said award to be binding on the employers and the employees concerned. An application to quash the said order having been made to the High Court, it was found that the Government's order of reference had been based on nothing more than a report made by the Commissioner of Labour, Madras, to the Government that an industrial dispute had arisen between the workers and the management of the Kandan Textiles Limited and a letter addressed by the President of one of the two workers' unions to the Government. The report of the Commissioner of Labour had been based on two letters addressed to him by the President of the Union, while the details of the dispute referred as mentioned in the Government's order of reference has been copied *verbatim* from the said President's letter to the Government; but none of those details were to be found in the two letters addressed to the Commissioner of Labour, nor had any demands concerning any of them been made to the management; and the enumeration of the details of the dispute in the order of reference omitted the only dispute reported by the Commissioner of Labour. In these circumstances the learned Judges felt bound to hold that the Government had not applied their mind to the relevant materials placed before them, before making the reference, and they, accordingly, quashed the reference and the Tribunal's proceedings and award.

32. We agree that where it is clearly established that an industrial dispute, stated in the reference to a Tribunal to exist, does not exist or cannot be said to have been found by Government to exist, the Tribunal should hold that the reference should not have been made on the ground of an existing industrial dispute but if the reference says (as the reference in the Madras case does not appear to have said) that such a dispute is apprehended, or that such a dispute exists or is apprehended, different considerations, as we shall show below, would apply. We think that where the reference to the Tribunal is on the basis only of an existing industrial dispute, the Tribunal is entitled to proceed on the presumption that such a dispute exists, unless and until such presumption is displaced or rebutted by positive evidence; and that on such displacement or rebuttal the Tribunal will have no further jurisdiction in the matter. It is an accepted principle of arbitration that if there be no difference between the parties, there is nothing for the arbitrator to arbitrate about; and as observed by du Parcq, L.J. in R/2 *V. National Arbitration Tribunal, Exparte Keable Press, Ltd.* "In some cases there may be a doubt whether there is a dispute between employer and workmen. If the matter came before the Tribunal and it became clear that there was no dispute, then I suppose everybody would go away happy and that would be an end of the matter."

33. There may be cases in which an industrial dispute exists in the head office or some of the branches of a bank but not in the other branches. In such cases it is necessary to remember that a banking company does not work separately in each of its offices and branches and that all of them form one organisation, so that it is not possible to regard each branch or office as a separate entity. Of course, a dispute may be shown or represented to exist only in a particular branch. Under section 18 of the Industrial Disputes Act, 1947, the award which is declared by the appropriate Government to be binding under sub-section (2) of section 15 of the Act would be binding on (*a*) all the parties to the industrial dispute and (*b*) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Tribunal records the opinion that they were so summoned without proper cause. Sub-section

1. Russell on Arbitration and Award, 11th Edn. p. 329.
2. (1943) 2 All-England Law Reports 633.

(*d*) of section 18 goes further and says that the award shall be binding on "all persons who subsequently become employed" in the establishment or part thereof concerned in the dispute. In the present case the Government order of the 13th June 1949 names as the parties to the industrial dispute the banking companies mentioned in Schedule I annexed thereto, including their branches, and their employees. The intention, therefore, is that the individual employees (in branches or elsewhere) who may not be concerned in the dispute are not to be exempted from the operation of the award. That intention, in our opinion, is justified because it is appropriate to treat the whole body of employees of a bank including its branches, as one body just as the bank and its branches form one unified organization. We do not, therefore, think that it would be proper or legitimate to treat the employees of a particular branch of a bank who may not have raised a dispute as separate from those who have done so. Employees in certain branches may not have come forward because their co-workers elsewhere are fighting their battle. If such employees were to be placed on a footing different from those who have actually raised the dispute, the main object of industrial arbitration in cases of collective dispute, namely, collective settlement, would be frustrated. If industrial disputes are to be confined only to such workmen as are vocal or as are members of a union which raises a dispute, the inevitable result would be that the employees who are silent to-day would start making demands tomorrow and the reverse of industrial peace would be achieved. It is with this object, we believe, that a Board or Tribunal has been invested, in section 18 of the Act, with the power of summoning parties other than the original parties to an industrial dispute, "as parties to the dispute", a power analogous to that vested in a civil court under rule 8 of Order I of the Code of Civil Procedure. The principle applicable is thus stated in Explanation VI to section 11 of the said Code; "Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating".

34. To proceed next to the question of apprehended disputes, it has, in the first place, been contended that the idea of an apprehended dispute being vague and subjective, it is difficult to adjust the principles of arbitration to such a concept and it is doubtful how far legislation as to the reference of such disputes for adjudication can be regarded as valid. The essence of a dispute is a difference between two parties, one making a claim and the other denying or refusing it. In the Kandan Textiles case referred to above it was observed, "It seems to us, on a fair reading of section 10 that the Government must have reason to believe that in a particular business a definite dispute is known to exist or is apprehended by reason of demands and discussions taking place amongst the workers and the management". Under section 10 of the Act, however, Government are entitled to refer a dispute to a Tribunal merely if an industrial dispute is apprehended, presumably by Government, *i.e.*, on Government coming to entertain a certain subjective state of mind. It has been contended that such subjective state of mind need not always be founded on "demands and discussions" a situation in which no party may have actually made any demands or been in a position to consider, meet or refuse them. In such a situation, it has been asked, how is it possible for the arbitrator to apply the principles of arbitration to the alleged dispute? The ordinary law of arbitration that would apply, it has been contended, is that where there has been an agreement as to submission to arbitration, it would be a condition precedent to the arbitrator entering

upon any form of inquiry that a difference should have arisen between the parties (*London and Noth Western and Great Western Railway Companies* v. *Billington Ltd.*)[3]. It was further contended that the application of the ordinary law of arbitration should be presumed unless the statute made it clear that it was to be abrogated or modified. The repugnance that a provision regarding reference to adjudication of apprehended disputes might arouse in some judicial minds is illustrated in *Rex* v. *National Arbitration Tribunal*[4], where Bennet J, with reference to a certain provision in the Conditions of Employment and National Arbitration Order, 1940, beginning with the words, "If any trade dispute exists or is apprehended", said, "There have crept into that paragraph three words which, if they have the effect of enlarging the meaning of the expression 'trade dispute' ought not to be there. The three words are 'or is apprehended'. I am not sure what these words mean. Apprehended by whom? By the Minister, or by some interested or disinterested spectator? Whatever their intention is, it is clear that the Minister has no power to refer to the Tribunal a dispute which someone thinks may arise. His only power is to refer an existing dispute". Bennett J was one of a bench of the three Judges of the Court of Appeal which allowed an appeal from the decision of a Divisional Court dismissing an application for an order prohibiting the National Arbitration Tribunal from adjudicating on the dispute between the National Association of Local Government Officers and the Bolton Corporation. The decision of the Court of Appeal was reversed by the House of lords[5].

35. It is to be noted, in the first place, that so far as the Industrial Disputes Act, 1947, is concerned the words "or is apprehended" can hardly be characterised as having "crept" into section 10, as if by inadvertence. Those words have been taken from an English enactment and must be deemed to have been deliberately inserted. It is further important to bear in mind the difference between the objects and functions of industrial arbitration and those of the ordinary law of the land: the matter has been discussed at length by the High Court of Madras in the case of *C. Baktavatsalu Nayudu* v. *The Chrome Leather Co., Ltd.*[6] There the learned Judges cited with approval several passages from "Conciliation and Arbitration in Industrial Disputes", a publication of the International Labour Organization and "Labour Disputes and Collective Bargaining" by Ludwig Teller. We may refer to the following passages quoted from the first publication: "Despite the fact that conciliation and arbitration institutions are often actually described as courts they are shortly distinguished from the ordinary Courts of law" (page 19). "The function of conciliation and arbitration is to establish a compromise between the interests of the parties to a dispute and create a new basis for their mutual relations—that is to say, to make law and not, as in the judicial settlement of a dispute on rights, to interpret it..... In the first case, therefore, elucidation of the facts is the basis for a settlement of the legal position by a Judge; in the second, it is the basis for the creation of fresh law, whether in the form of an agreement between the parties or of a solution imposed by the court or board on its own authority or directly by the State." (p. 90). "The settlement of disputes on collective interests by conciliation and arbitration is in fact less a judicial than an

3. (1899) A.C. 79.
4. (1941) 2 K.B. 405.
5. (1943) A.C. 166.
6. (1949) 1 F.J.R. 84.

administrative and even a legislative function of the State, and in its performance the principles of civil law concerning finality can be applied only after careful adaptation to the special needs of this branch of law." (p. 127).

36. We also quote one of the passages cited by the learned Judges from "Labour Disputes and Collective Bargaining" by Ludwig Teller. "Industrial arbitration may involve the extension of an existing agreement, or the making of a new one or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements." (Vol. I, p. 536).

37. The learned Judges observed: "Although we are not disposed to repel an argument that in construing a statute we should presume that the ordinary law of the land is to be applied unless the statute makes it clear that the ordinary law is to be abrogated and that we should not lightly read into it a power in anybody to deprive parties of their freedom to contract or take away from them existing rights, yet we cannot ignore the history of Industrial Legislation or overlook the circumstances that the legislature now frequently passes legislation which interferes with freedom of contract and takes away from persons their existing rights". In that case the learned advocate who appeared for the management relied on the word "adjudication" in section 10 of the Act. The learned Judges referred in that connection to the preamble of the Act, where the word "adjudication" is not used but which says, "whereas it is expedient to make provision for the investigation and *settlement* of industrial disputes," etc., and they said: "We are not prepared to attach any significance to the use of the word "adjudication" and its etymological connection with the word 'Judge'. It is erroneous to think that a Judge can decide only according to the general law of the country. If so required by a statute, he may apply any standards for his decision, such as fairness and reason, rather than the common law." Reference may also be made in this connection to the following observation made by Harries, C.J., in a case decided by the High Court of Calcutta, *Re Indian Paper Pulp Co., Ltd.*[7] "The industrial tribunals have in my view much wider powers and their award may contain provisions for the settlement of a dispute which no Court could order if it was bound by the ordinary law of the land."

38. Having regard to the principles enunciated in the decisions referred to above, it seems to us that the insertion of the words "or is apprehended" in section 10 of the Industrial Disputes Act cannot be regarded as a piece of legislation which is infructuous or of no effect. The main object of industrial legislation is the maintenance of industrial peace, and one of the principal ways of attaining that object is to prevent an apprehended dispute from ripening into an actual dispute by the application of the machinery of adjudication. If, therefore, such a legislative enactment does not appear to be moulded according to the ordinary canons of arbitration that cannot be regarded as a defect or as something that renders its provisions nugatory. The materials needed for Government's entertaining an apprehension regarding a possible industrial dispute would be probable demands and probable refusal thereof, based on their knowledge of the existing conditions in a particular industry and of the usual patterns of behaviour on the part of the employers and the employees. In our opinion, in such cases a Tribunal would not be at liberty, except in a case like that of Kandan Textiles, Ltd., to prove into the facts on

7. [1949] (1 F.J.R.) 33.

which the apprehension of Government was founded. Such apprehension is a subjective state of mind, perhaps even more subjective so to speak than the state of mind connected by the expression "satisfaction" with which cases like Liversidge's case[8] were concerned. The Tribunal cannot substitute its own mind for the mind of Government and come to a different conclusion and hold that no adequate reasons existed for the apprehension. It would, of course, be necessary for the Tribunal, after the reference, to ask for the particulars of the dispute by calling upon the employees to submit their claims and upon the employers to reply to them.

39. An attempt was also made to show that whereas Government might have the power to refer to a Tribunal an apprehended dispute, the Tribunal would still have no jurisdiction to deal with it, because its jurisdiction is created by sub-section (1) of section 7 of the Act, which says, "The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act." It was pointed out that the sub-section does not speak of apprehended dispute as well and that the definition of industrial dispute refers only to existing "disputes or differences". Similarly, it was further pointed out that in section 18, which lays down on whom settlements and awards are binding, only industrial disputes are in terms referred to and that towards the end the section even goes on to refer to "all persons who were employed..... on the date of the dispute". It was pointed out that no date could be assigned to an apprehended dispute and that "date of the dispute" could not be construed to mean "date of the apprehension regarding a dispute arising in the mind of Government". With regard to the argument based or the language of section 7 and the first part of section 18, we have little doubt that the expression "dispute" includes an apprehended dispute within its scope and meaning. We are further inclined to hold that the last part of section 18 of the Act, where the reference to "the date of the dispute" occurs, should be taken as referring to such cases as show any difference between the parties, *e.g.*, from the particulars submitted and the replies thereto. The Tribunal or Conciliation Board or officer, as the case may be, may have to decide in such cases when the difference arose, and that would be the date of dispute in such cases.

40. The next objection with which we have to deal is that the Tribunal has no jurisdiction over an apprehended dispute unless and until it has crystallised into an actual industrial dispute. Reliance has been placed on Russell on Arbitration and Award, wherein at page 329 (Eleventh Edition) it is stated: "In the case of an agreement to refer future disputes to arbitration the arbitrator's jurisdiction does not arise until a dispute has arisen", a principle followed in *London and North Western and Great Western Railway Companies* v. *J. H. Billington, Limited*[9], already referred to. It is contended that an agreement as to submission relating to future differences corresponds to a reference by Government under the Industrial Disputes Act and that, therefore, the principle referred to must apply to any adjudication that may follow such reference. We are of the opinion that the ordinary law of arbitration will not apply to the kind of cases we have been considering, for it would be the principal object of the reference, in a case of an apprehended dispute, to prevent its crystallising into an actual dispute, and that for an adjudicator in such a case to wait till such crystallisation occurs would be to defeat the

8. (1942) A.C. 206.
9. (1899) A.C. 79.

very object of the Act. In practice it has usually been found that where an apprehended dispute has been referred for adjudication the Tribunal has found the elements of a dispute to exist, though there may not have been a very explicit formulation of demands and their refusal before; but where even this is not the case the Tribunal may come to the conclusion that a dispute is likely to develop on lines which can be ascertained and would be justified in making an award accordingly. For instance, two factories in the same industry are included in a reference, the workmen of one of which have formulated demands which are resisted by their employers, while those of the second factory have not yet done so, at any rate so clearly. In such a case the Tribunal may include the workmen of the second factory in its award on the footing of an apprehended dispute between such workmen and their employers, provided that the reference is on this basis; for there can be little doubt that if an award regarding only the first factory were made the workmen in the second would at once begin to agitate for relief or advantages similar to those won by their comrades in the first factory. It does not, therefore, appear to us that a Tribunal can have no jurisdiction to deal with cases of apprehended disputes unless they ripen or crystallise into actual disputes.

41. The last set of objections that we have to deal with in this Chapter are concerned with the amendment of the Government order of the 13th June 1949 made by the notification, dated the 12th August 1949. That notification was as follows :—

> "In exercise of the powers conferred by clause (*c*) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to direct that the following amendment shall be made in the Order of the Government of India in the Ministry of Labour No. LR-2(212), dated the 13th June 1949, namely :—
>
> "In the said Order, after the words 'whereas an industrial dispute has arisen' the words 'or is apprehended' shall be inserted."

It will be seen that this notification does not purport to be a fresh reference under clause (*c*) of sub-section (1) of section 10 of the Act. It has been contended before us that this order is bad and of no effect for the following reasons :

(1) In making the amendment the Government of India have not followed the provisions of section 21 of the General Clauses Act and it is, therefore, invalid and of no effect.

(2) There should have been recitals in the order of the 12th August 1949 stating that Government apprehended a dispute between the banking companies concerned and their employees and that it was desirable to refer such dispute for adjudication and explaining why such reference had not been made in the order of the 13th June 1949, and also, in case the apprehension entertained by Government was subsequent to the original reference, giving the date when such apprehension arose in the mind of Government. The absence of such recitals shows that the Government of India did not apply their mind to the matter on which the notification of the 12th August 1949 purports to be based, and for this reason the Tribunal should hold that the alleged apprehension was not in fact entertained by the said Government.

42. Section 21 of the General Clauses Act (X of 1897) reads thus: "where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye-laws so issued." It has been contended that the expression "in the like manner" in the section should be interpreted to mean "with recitals such as were made in the original order, and with added recitals to explain the necessity for the amendment". We do not think that there is any substance in the argument. There is no specified form in which an order of reference under section 10 of the Act or an amendment thereof has to be made. The words "in the like manner" have reference, in our opinion, less to the form of the amended notification, order, etc., than to the manner of the exercise of the power referred to at the beginning of the section, *e.g.*, by issue of a notification in the official Gazette. The amending notification begins with a reference to clause (*c*) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947); it then refers to the order of the Government of India in the Ministry of Labour No. LR-2(212), dated the 13th June 1949: and it gives the three words which, by way of amendment, have to be inserted in the original order, specifying the place where they shall be so inserted. We fail to see in this anything suggesting that the Government did not apply their mind to the question before them. In our opinion there was nothing more for them to do. Nor was it necessary for Government to say when the apprehension had arisen in their minds, for the form of the amendment clearly shows an intention to imply that it had been in existence at the date of the original order. The three words inserted appear thus to have been left out of the original order owing to inadvertence. In the result, we do not find anything in the notification of the 12th August 1949 which can be said to detract from its full effect or from our jurisdiction in the matter.

450

CHAPTER III

Classification of Banks and Areas

SECTION I

Classification of Banks

43. The first question on which the Tribunal heard the parties was, should banks be classified into different categories for the purposes of this adjudication and if so, on what lines? (item 33 in Schedule II).

44. The classification adopted by the Government of India in the said Order is as follows:

I—*Scheduled banks having branches in more than one Province or State*

Group A

(*i*) Banks having deposits of over Rs. 50 crores,
(*ii*) Exchange Banks.

Group B

Other scheduled banks having deposits between Rs. 15 and Rs. 50 crores.

Group C

Other scheduled banks.

Group D

Banks under moratorium,
Banks in liquidation,
Banks working under schemes of arrangements,
Banks prohibited from accepting fresh deposits,
Banks regarding which applications for schemes of arrangement are pending.

II—*Non-scheduled banks having offices in more than one Province or State,*

Group A

Banks working normally.

Group B

Banks which are working under schemes of arrangement or are in liquidation, etc.

45. In the Bombay Banks award made by Mr. Justice Divatia on the 8th April 1947 (to be referred to hereinafter as the Divatia award) the following classification was adopted:—

Big banks, *viz.*, those with working funds (paid-up capital, reserves and deposits) of 15 crores and above.

Small banks, *viz.*, all other banks.

46. It seems to us that some form of classification of the banks is necessary though the employees' representatives have generally opposed classification, mainly on the grounds that classification would violate the principle of standardization and mean different rates of pay, etc., for the same class of workmen in different banks and that this would adversely affect the solidarity of the employees and contravene the principle "same work same pay". But they have had to admit that banks vary widely in their resources, their profits and their capacity to pay. Our attention has been drawn to the fact that in New Zealand the Court of Arbitration has recently fixed a uniform scale of salaries for the staff of the State-owned Bank of New Zealand and five privately owned trading banks operating in the said Dominion[1]. It is no doubt a salutary principle to adopt the resources of the industry as a whole as the basis on which pay scales are to be fixed; this has been done in this country in the cotton textile industry. But if, in an industry in which the units vary so greatly in their capacity to pay as the banking industry, the pay scales are to depend on the burden which the industry as a whole can bear, then it is likely that the scales so fixed would fall short of what is actually being paid in the largest banks and would exceed what the smaller banks are able to pay. It is true that what a Tribunal normally fixes as a scale of pay represents the minimum scale; and we find that the Tribunal appointed in West Bengal to adjudicate upon the disputes between a large number of engineering firms in the said State and their employees raised the issue regarding scales of pay in this form: "Minimum basic pay and scales of pay for highly skilled, skilled, semi-skilled and unskilled workers for clerical and supervisory staff. We do not, however, think that if we only fixed scales of pay for the poorest class of banks in the least expensive parts of the country we should adequately discharge our duty to lay down scales of pay for the whole body of bank employees with whom we are concerned. The largest number of awards made in this country concern individual units of particular industries, while we have to deal with a large number and variety of units. The best course for us to adopt, in our opinion, is to classify the banks within our jurisdiction broadly into certain groups according to their working funds or resources, which may be taken generally to reflect their capacity to pay. The bigger banks have pressed for two, while smaller banks have asked for three or more classes, and several have also asked for a further classification in the case of branches. In the Divatia award the learned adjudicator had to deal with twelve big and eighteen small banks at Bombay. We have to deal with 83 scheduled and 122 non-scheduled banks all over the country. Costs of living differ in different parts of the country and in view of this we shall find it necessary to divide it into three classes of areas or localities with reference to such costs. Therefore if we divide the banks into two classes there would be six different scales of pay, etc., and if we divide them into three classes there would be nine different scales of pay, etc. Perhaps a division of scales of pay, etc., into six groups is inherently more attractive than one into nine groups. But it seems to us that we may, in view of the differences in the resources of different banks, aim at three, rather than two, kinds of wages, namely, a minimum wage sufficient to provide for the bare needs of subsistence, a fair wage necessary for health and decency and a living wage necessary to provide a certain standard of comfort[2]. The Industrial Truce Resolution of December 1947 referred *inter alia* to the need for "making

1. "The Bank Officer" (London), June 1949, p. 5.
2. See the "Minimum Wage-Fixing Machinery" published by the International Labour Organisation.

provision for payment of fair wages to labour"; and article 43 of our Constitution Act says that the State shall endeavour to secure to all workers "work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities." It is true that though the living wage is the target to be aimed as it has "to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of industry to pay."[3] But a number of banks appear to be incapable of supporting even a fair wage; a certain number are capable of paying a fair wage; while the banks, with the largest resources are able to pay even a living wage. Mr. Justice Higgins, President of the Australian Court of Conciliation and Arbitration, defined the living wage as one which can provide not merely for absolute essentials such as food, shelter and clothing but for a condition of frugal comfort estimated by current human standards." The Royal Commission on the Basic Wage for the Commonwealth of Australia approved of the following description of the "minimum of health and comfort level" by the Commissioner of the Bureau of Labour Statistics of the United States of America (a level corresponding to the living wage):

> "This represents a slightly higher level than that of subsistence, providing not only for the material needs of food, shelter, and body covering, but also for certain comforts, such as clothing sufficient for bodily comfort, and to maintain the wearer's instinct of self-respect and decency, some insurance against the more important misfortunes—death, disability and fire—good education for the children, some amusement, and some expenditure for self-development."

47. It is not possible for this Tribunal to lay down, in the case of any bank or class of banks, a scale of pay and allowances which is below the subsistence level. If any bank is unable to provide for such scales it must be regarded as an uneconomic unit in the industry. For a certain class of banks not more than the subsistence level can be laid down; and for certain others scales of pay, etc., approximating to the living wage can be laid down. Between these two classes would be the banks which can pay something higher than subsistence wages. In our opinion, it would be better to base such classification on the criterion of working funds (paid-up capital, reserves and deposits) rather than deposits alone. Deposits fluctuate according to seasons; therefore, those of a single specific date (*e.g.*, 31-12-1949), as suggested by some parties, would be unsuitable. Leaving out 1947 (in which year some banks were badly affected by the disturbances consequent on the partition of the country) we think that the safest criterion will be the average of the working funds based on the figures of the 30th June and the 31st December of the year 1949. We exclude the figures of 1948 also; the fall in deposits which became noticeable in 1948 became more pronounced in 1949, and though ordinarily we should have thought that there was greater safety in taking the average for a longer period than a year, we think that the average of the figures of 1948 and 1949 might give a misleading picture of certain banks in the present context of events. We do not think that the risk of 'window dressing', as described by the MacMillan Committees[4], is so great in India that it need be guarded against.

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3. Report of the Committee on Fair Wages (1949), p. 8.
4. Report of the Committee on Finance & Industry (Cmd. 3087 of 1931), p. 156.

48. For the purposes of this award we classify the banks, both scheduled and non-scheduled, mentioned in the orders of the 13th June 1949 and the 28th September 1949 as follows:

A. Banks mentioned in Group A among the scheduled banks in the said orders and other banks, if any, having average working funds of Rs. 25 crores and above.

B. Banks having average working funds below Rs. 25 crores and not below Rs. 7½ crores.

C. Banks having average working funds of less than Rs. 7½ crores.

We would recommend that if in future it should so happen that the working fund of a particular bank has been below the lower limit or has been higher than the upper limit set for its class continuously for a period of two years it should then be deemed to have passed into the next lower or the next higher class, as the case may be, provided that the directions made in this award are still being followed by the bank at that date, and provided further that such change will not adversely affect the existing employees. In the case of the Habib Bank, Limited, we think that it should be classed not according to the figures of its deposits, etc., in the Indian Union alone but on its total figures for this country and elsewhere, and we direct accordingly. This principle will obviously apply to the Exchange Banks also, whose capacity to pay has to be determined by global considerations.

49. The next question we take up is, how branch offices should be classified, having regard to the extent of their business (item 34 in Schedule II). Certain banks, *e.g.*, the Central Bank of India, Limited, and the Bank of Baroda, Limited, have adopted a system of classification of their branches under which the pay-scales, etc., of their employees working at a branch are different from and lower than those obtaining at the head office. As already stated, we intend introducing a classification of areas or localities depending on the differing costs of living at different places. Scales of pay, etc., prescribed for a particular locality would be equally binding on all head offices as well as on all branches situated there; and we are averse to making any distinction between a head office and its branches as such, (with the exception of a certain rule regarding very small branches, as stated below). For though it may be true that a branch may not often attract much business or make much profit, it is a part of one entire organization or concern, and the wages, etc., paid to an employee at such a branch must not be allowed to be reduced for such reasons. There can be no objection, however, to his getting less than an employee at the head office on the ground that his branch is situated in an area where the cost of living is less, a criterion of a character different in nature from the criterion of the volume of business or profits.

50. We have classified the banks mainly for purposes of laying down their employees' scales of pay and allowances. Other matters like conditions of service, retirement, benefits and leave will be subject to conditions specifically mentioned in this award, some of which may be related to the classification. We think that in certain circumstances a branch of a small bank would merit special consideration in the application of the pay scales laid down by us; and we accordingly direct that where a branch of a bank of class C has not more than eight employees in all (*i.e.*, officers, clerks and members of the subordinate staff) and is situated at a place of which the population, according to the latest census (of 1941 or any later year), does not exceed 25,000, the pay scales and allowances applicable shall be reduced by 8 1/3 per cent in

the case of such of the employees as are permanent inhabitants of the place with residences of their own.

51. Lastly, an important consideration arises in the case of banks which amalgamate and form a new institution. The resultant bank may not be bound by our award unless the amalgamation is brought about by an existing bank expanding and taking employees of the other amalgamating banks on its staff. In such cases the resultant bank may be found to belong to a class higher than any of the amalgamating banks. This might frustrate one of the main subjects of amalgamation, namely, to cut down expenses. We think that in such a case the resultant bank should be deemed, for a certain period, to belong to the highest class to which any of the amalgamating banks belonged before the amalgamation. We direct that in case any such bank is bound by our award such period shall be three years from the date of the amalgamation, and that after the said period in applying the appropriate scales of pay, etc., the procedure laid down by us regarding adjustment shall be followed. Under our directions, if three banks belonging respectively to classes A, B and C amalgamate and our award is applicable to the resultant bank, the later would belong to class A; if they initially all belonged to class B, the resultant bank would remain in class B for purposes of this award (in case it is applicable) for such period. In the former case the resultant bank would no doubt not only get no benefit but will have to pay the staffs of the former banks B and C at higher scales, but we do not see how such a result can be reasonably counteracted. Such a consequence will probably deter banks from effecting such unequal amalgamations, or if they do so they will be acting with their eyes open.

SECTION II

Classification of Areas

52. We next take up the question of the classification of different areas or localities according to the cost of living. The statistics to be found in the Report (Published in 1949) of Mr. S. Subramanian, Statistician in the office of the Economic Adviser to the Central Government, on an enquiry into family budgets of middle class employees of the said Government, show that the cost of living differs to a material extent in different parts of the country. It is true that the differences that used to exist before the last war in the cost of living at different places have now been substantially reduced owing to rationing and other factors, but it cannot be denied that material differences still persist in living costs between State and State, and between urban, semi-urban and rural areas. In any case, when the levelling factors such as rationing and price control are removed such differences will in all probability reassert themselves. The main source from which such costs can be ascertained is at present Mr. Subramanian's Report which is based on investigations relating to the period November 1945 to August 1946. The validity of the statistics recorded and conclusions reached in that Report have been challenged by certain banks. It was pointed out that unlike the procedure adopted in the Rau Court of Enquiry or Mr. Justice Rajadhyaksha's enquiry in connection with the Posts and Telegraphs Department of the Central Government, no witnesses were examined before this Tribunal nor any budgets (save a solitary one from the State of Madras) filed. Mr. Subramanian's Report, it has been contended, is a compilation based on figures supplied by correspondents who would not only be interested in inflating the figures of their expenses but

who were told, in the letter addressed to them by the Economic Adviser: "This enquiry has been undertaken primarily with a view to enabling Government to help their employees by providing adequate relief to them as and when necessary." It has been further pointed out that with the procedure adopted no cross-examination of the correspondents was possible and that Mr. Justice Rajadhyaksha's report amply shows that a large number of witnesses examined by him had deliberately inflated their expense figures. As against these arguments, most of which have some force, the following considerations must be noticed. In the first place, it is to be remembered that Mr. Subramanian is well-known to be an expert statistician who has been working at family budgets for years; and in his Report he has stated that he found a certain number of budgets unsuitable and rejected them, that all the budgets were subjected to close scrutiny, that he accepted for detailed investigation only those which he considered wholly reliable, such budgets numbering 6,198 and that personal contacts were established with some of the persons selected. The upper income limit was fixed at Rs. 500 per month, the total number of employees falling within such limit being known to be of the order of several hundred thousands; thereafter the problem of choosing an unbiassed random sample in which each family had an equal chance of being included was tackled by the "lottery" method. Secondly, a very detailed list of heads of which information was to be supplied was furnished to each employees selected and after the information was supplied the items of income and expenditure were in each case subjected to careful examination, the expenditure items being particularly checked against the prevailing retail prices and the available consumption figures in respect of cereals, etc. Thirdly, the statistics and the conclusions to be found in the Report were relied upon by both the employee's representatives and the banks in great detail; and that was the reason apparently why no witnesses were examined before the Tribunal nor any budgets (except one) filed; nor did any party show any desire to call Mr. Subramanian as a witness for the purpose of cross-examining him regarding his statistics or conclusions. We think that we must proceed on the assumption that the Report on the whole furnishes valuable material on which, subject to the test furnished by other awards and investigations, we can base our conclusions.

53. From Mr. Subramanian's Report we get figures of the average monthly expenditure and average monthly concessions per family in the different cities and areas of India[5]. From those figures we find that the most expensive places are Bombay, Delhi and Calcutta. Conditions at Ahmedabad (population 5.9 lakhs) approximate to those of Bombay, and Divatia J. by a separate award, made the Bombay award applicable to the banks in that city. The area now included in the term Greater Bombay must also be deemed to be as expensive as the city of Bombay. Similarly, Howrah and Barrackpore, in our opinion, should be held to be as expensive as Calcutta, which should be deemed to include for the purposes of this award, the following places: Behala, Alipore, Cossipore, Garden Reach, Barangore, Tollygunge, the South Suburban Municipal Area and Dum Dum. All these places should, in our opinion, be regarded as forming class I areas.

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5. See pages 60 and 54 (Calcutta), 83 and 78 (Bombay), 128 and 123 (Madras), 151 and 146 (Bengal and Assam), 182 and 177 (Bombay State), 204 and 199 (Madras State), 227 and 222 (Punjab), 259 and 254 (Uttar Pradesh), 282 and 277 (Bihar and Orissa), 304 and 299 (Madhya Pradesh).

54. As to the areas outside the places mentioned above, there are obvious differences in the costs of living in the populous town and in the semi-urban and rural areas. Some of the big banks with branches outside the big towns and cities have adopted the system of classifying their offices and branches not according to States as a whole but according to the importance of different places where such offices and branches are situate, based on their industrial and commercial importance, population, etc. Though *prima facie* there is much to be said for this method there are obvious difficulties in obtaining all the necessary data required in adopting it for the whole of the country. After giving our best consideration to this question we are of opinion that the following places should be held to constitute class II area, *i.e.*, the regions coming next after the places included in class I areas, with regard to the general cost of living.

55. All towns and cities (other than those included in class I areas) shown in the census report of 1941 as possessing population of

50,000 or more in the Punjab.

1,00,000 or more elsewhere.

All places not included in areas of classes I and II will fall into class III areas.

457

CHAPTER IV

SCALES OF PAY: CLERICAL STAFF

SECTION I

THE BASIC YEAR

56. The most important questions for our consideration, and those in which the parties have taken the greatest interest, are those relating to scales of pay and dearness allowance (items 1 and 3 in Schedule II). A part of item 3 in Schedule II is thus worded: "Can a portion of the dearness allowance be transferred to, and absorbed in, the basic wage?" This question involves decision of the question, which year should be taken, for the purposes of fixing scales of pay, as the basic year. We propose to consider this question before taking up the questions of scales of pay and dearness allowance.

57. We think it essential that at the lowest level the basic wage should be supplemented by dearness allowance ensuring a fair degree of neutralization of the increased cost of living. For this purpose it is our intention to prescribe a sliding scale of dearness allowance rates. This was not done in Divatia J's award because presumably he thought (like the Central Pay Commission) that cost of living would become more or less stabilized at a certain index figure; his example was followed in several bank awards in West Bengal and in Uttar Pradesh; but certain industries in West Bengal have adopted a sliding scale of dearness allowance formulated by the Bengal Chamber of Commerce. If a scheme with a sliding scale of dearness allowance is to be adopted, two considerations have to be borne in mind: (1) it is desirable that the basic pay should represent as large a part of the total emoluments as possible and (2) the basic pay should be fixed at a point below which the cost of living is not expected, so far as it is permissible to speculate on a matter of this nature, to fall in the near or foreseeable future. Some of the existing pay-scales as fixed by awards relating to disputes not connected with banks, specially those relating to the working class have been geared to the year 1939 as the basic year. It is, however, clear that this is not the case with the Divatia award, which has served as a guide to a number of awards relating to banks in this country, or with the Central Pay Commission's Report. At the date of that award the cost of living index for Bombay was about 255[1]. If the dearness allowance of 25 per cent prescribed in the said award was meant to represent, say, an 80 per cent neutralization of the increase in the cost of living, the scales of pay fixed by the award would appear to relate to an index figure of about 195, which existed between the years 1942 and 1943. As to the second principle, Divatia J observed:

> "The basic pay must be more than the pre-war starting pay because it is common knowledge based on experience of the First World War that although the rise in the cost of living occasioned by the

1. According to the working class cost of living index numbers as published in the *Indian Labour Gazette* (base August 1939 = 100). Index figures as published in the said Gazette are referred to throughout this award, except where any other source is mentioned or indicated.

second war may go down in future, a part of the rise is bound to remain as a permanent feature in the economic life of the country. The exact extent of it cannot be predicted or measured now because it would depend not only on the steps taken by the authorities concerned to bring down inflation and increase production of necessary articles of consumption but also on world factors such as prices of imported articles, effect of currency, supply and demand of commodities, etc. The amount of dearness allowance which can be given may not fully neutralize the rise in cost of living and a fair living wage. There is, therefore, the need to raise the basic wage to such an amount that along with the dearness allowance, the total emoluments would be sufficient to afford a decent livelihood."

The Central Pay Commission recommended that no dearness allowance should be paid to an employee when the cost of living indices fell below 180 (paragraph 72 of their Report). The Commission were referring, we believe, to All-India index figures which are no longer published; but in Bombay the figure 180 was attained somewhere between 1942 and 1943. The hope of the said Commission that the price levels had reached their peak about the time their Report was written (when the cost of living index was about 285; see page 401 of the Report) has been markedly belied; and it is difficult to foresee at what level the cost of living is likely to be stabilized, in the next few years, for a sufficiently long period to serve as the foundation for a basic pay.

58. In this connection we have considered the merits and disadvantages of choosing the years 1942 and 1944 as the basic year. The merit of the earlier year is that the indices relating to it approximate to the limits fixed by the Central Pay Commission as the starting point for dearness allowance, and that they would appear to be neither too low nor too high (Bombay 150, Ahmedabad 156, Sholapur 155, Jalgaon 180, Kanpur 181, Nagpur 165, Madras 136; see page 784 of the *Indian Labour Gazette* for April 1950), the deviations from the average of the published figures (160) being comparatively low (*plus* 21 in the case of Kanpur and *minus* 24 in the case of Madras). As regards the indices for 1944, the great merit in adopting that year as the base would be that the Central Government are now publishing cost of living index series for 15 towns in different parts of India treating 1944 as the base year (see pages 787 to 795 of the *Indian Labour Gazette* for April 1950). For the seven towns of Bombay, Ahmedabad, Sholapur, Jalgaon, Kanpur, Nagpur and Madras they have been publishing index series with August 1939 as the base, but it would not be difficult to convert those series to the base of 1944. Another advantage in adopting 1944 as the base year would be that by that date, owing to different rates of increase in the index figures in the different parts of India (Bombay 150 to 226, Sholapur 155 to 276, Kanpur 181 to 314, Nagpur 165 to 267, Madras 136 to 207), there was a closer approximation in the actual costs of living than before, so that differences in dearness allowance at different places, when calculated on the subsequent index figures, are not likely to be so marked as they would be if the base year be taken as 1942. Besides, we have no sufficient data for converting the index figures for the 15 towns which are being published with base 1944 = 100 to the base of 1942. It may be said that the cost of living in 1944 was comparatively high and was removed from the present day's cost of living by less than 100,

and that, therefore, it is not safe to adopt such a year as the base, for if the cost of living goes down appreciably, as happened during the slump years at the end of the third decade of this century, the scales of pay fixed on such a basis would create an embarrassing situation. In "A New Province for Law and Order" (1922) Mr. Justice Higgins has stated, "It has to be admitted that the awards, in nearly all cases, have been made in a period when the cost of living is rising and that, therefore, they have generally increased the existing minimum rate..... What will happen if the cost of living should decrease—if the minimum for the basic or living wage shall have to be lowered? It is a fair question, but it is for the future to give the answer. I wish to confine my words to my personal experience. Yet there have been cases in which the Court has refused increases or has actually decreased the minimum rates, and the employees have listened to the reasons and loyally submitted". It has not been argued before us that the index figures are likely to take a steeply downwards course in the near future. The rise since 1944 has been nothing like that between 1942 and 1944, its tempo having already slowed down noticeably. That being the situation, to take as the base a year six years before the present date may not be too rash or unsound. If further support to our conclusion that we should take 1944 as the base year be required, we may point out that Rajadhyaksha J., in his award regarding the Posts and Telegraphs Department of the Central Government based his recommendations on calculations founded on figures relating to 1945 and that the Central Pay Commission recommended that the dearness allowance should commence only from the index figure 180. We, therefore, think that it would be best, on the whole, to take 1944, as the base year for the purpose of devising the pay scales. That would also involve less laborious mathematical operations than taking 1942 as the base year for the purpose of adjusting the cost of living index numbers as published in the *Indian Labour Gazette;* for those for the towns of Delhi, Ajmer, Jamshedpur, Jharia, Dehri-on-Sone, Monghyr and Jamalpur, Cuttack, Berhampur, Gauhati, Silchar, Tinsukhia, Ludhiana, Akola, Jubbulpore and Kharagpur are now being published with 1944 as the base year. The case of Calcutta, for which no cost of living figures are published in the *Indian Labour Gazette,* presents a difficulty. Cost of living index figures for the working class, however, are being published in the Monthly Abstract of Statistics by the Government of India, with a base of August 1939 = 100 for Calcutta. Unfortunately, that table gives no figures for 1944, but we have ascertained that the average cost of living ("general") figure for Calcutta for that year was 279. The Monthly Abstract of Statistics, therefore, should be followed in the case of Calcutta with this addition. As regards the towns of Bombay, Ahmedabad, Sholapur, Jalgaon, Kanpur, Nagpur, Madras and Calcutta for which index figures with base August 1939 = 100 are being published, the said figures can be converted to a 1944 base by multiplying them by the following co-efficients:

Bombay: $\frac{100}{226}$ or .44

Ahmedabad: $\frac{100}{290}$ or .34

Sholapur: $\frac{100}{276}$ or .36

Jalgaon :	100 / 295	or	.34
Kanpur :	100 / 314	or	.32
Nagpur :	100 / 267	or	.37
Madras :	100 / 207	or	.48
Calcutta :	100 / 279	or	.36

59. In referring to the cost of living index figures we have been obliged to make use of the figures published in respect of the working class cost of living. It has been taken for granted in previous enquiries and awards that roughly speaking the cost of living for a middle class earner is 80 per cent above that required by a corresponding working class earner. Besides the series of index figures we have been dealing with hardly any other kind of index figures are available at present. We have, accordingly, felt justified in basing our calculations and conclusions on the published tables of working class cost of living index figures.

SECTION II

Existing Awards and Scales of Pay

60. We now proceed to consider the important question of scales of pay. We shall first take up the subject of the pay of the clerical staff of the banks concerned. The first important award that dealt with the salaries of employees belonging to the middle classes was Mr. Justice Rajadhyaksha's award on the dispute between the Posts and Telegraphs Department of the Government of India and its non-gazetted employees. That award was made in July 1946 and was based on the requirements of the employees concerned during the year 1945. Mr. Justice Rajadhyaksha adopted the suggestion made by Mr. S. R. Deshpande, Director of the Central Government scheme for preparing cost of living indices for India, that the lower middle class family budgets should be correlated with the working class family budgets by the application of a co-efficient, *viz.*, 80 per cent of the requirements of a working class family to be added thereto for arriving at the requirements of a middle class family consisting of 3 consumption units. He arrived at the conclusion, by the application of the said co-efficient, that the cost of living for such a family was between Rs. 120 and 125 per month in Bombay and Calcutta and between Rs. 105 and 100 in urban and rural areas. This conclusion was based *inter alia* on the findings of the Rau Court of Enquiry that in 1939 a working class family needed not less than Rs. 35 per month in Bombay and places near Bombay, Rs. 30 per month in urban areas outside Bombay and Rs. 25 per month in rural or semi-rural areas.

61. Mr. B. B. Singh, I.C.S., Labour Commissioner of the United Provinces, made an award in respect of 40 banks in the said province on March 11, 1947.

He classified the banks into three classes, A, B and C and laid down the following scales for the clerical staff:

'A' class banks:

(1) Upper grade (for graduates): Rs. 75—5—120—E.B.—8—200;
(2) Lower grade (for under-graduates): Rs. 60—4—100—E.B.—5—150;
(3) Head clerks, supervisors and departmental-in-charges: Rs. 120—8—200—10—300.

'B' class banks:

(1) Upper grade (for graduates): Rs. 60—4—100—E.B.—5—150;
(2) Lower grade (for under-graduates): Rs. 60—3—90—4—100;
(3) Head clerks, etc.: Rs. 75—5—120—8—200.

'C' class banks:

(1) Upper grade (for graduates): Rs. 60—3—90—4—110;
(2) Lower grade (for under-graduates): Rs. 50—2—60—3—75;
(3) Head clerks, etc.: Rs. 75—5—120—6—150.

The learned adjudicator also awarded dearness allowance at the following rates:

'A' class banks:—30 per cent of basic salary with a minimum of Rs. 25 and a maximum of Rs. 50 per mensem.

'B' class banks:—25 per cent of basic salary with a minimum of Rs. 20 and a maximum of Rs. 37-8 per mensem.

'C' class banks:—25 per cent of basic salary with a minimum of Rs. 18 and a maximum of Rs. 27-8 per mensem.

62. Mr. Justice Divatia made an award regarding thirty banks in Bombay on the 8th April 1947. He divided the banks into two classes, big and small, following a suggestion made by the Reserve Bank of India,—banks which had working funds of 15 crores and above being placed in the category of big banks and those having less than 15 crores as working funds being classified as small banks. The scales of pay fixed for the big banks was as under:

Rs. 65—5—85—7½—130—E.B.—7½—160—10—190—E.B.—10—230—E.B.—15—275;

The scale of pay for the small banks was:

Rs. 55—4—63—5—78—6—102—E.B.—8—150—E.B.—10—200—E.B.—12—236—250.

The dearness allowance was fixed for the big banks at 25 per cent of salaries with Rs. 30 as minimum and Rs. 50 as maximum and for the small banks at 20 per cent of the salaries with Rs. 25 as the minimum and Rs. 35 as the maximum. By a subsequent award a similar adjudication was made with regard to certain banks at Ahmedabad.

762

63. On the 30th April 1947 the Central Pay Commission signed their Report. They suggested a large number of scales for the clerical class (Class III) of Government employees, the first five of which are given below:

(a) Rs. 55—3—85—E.B.—4—125—5—130,
(b) Rs. 60—5/2—75,
(c) Rs. 60—4—120—E.B.—5—170,
(d) Rs. 75—3—105,
(e) Rs. 80—5—120—E.B.—8—200—10/2—220.

As regards the dearness allowance they provided a table showing the rates of dearness allowance recommended for different income groups according to every increase of 20 points in the cost of living index figures. They further suggested that when the index number went below 180, dearness allowance should cease but that at that stage the sums of Rs. 5 and Rs. 10 should be added to the basic pay of the two lowest income groups. They further recommended the grant of a housing or house rent allowance on the following scale:

Pay of Officers	Cities with population over 1 lakh.	Cities with population over 5 lakhs.	Bombay and Calcutta.
	Rs.	Rs.	Rs.
Below Rs. 55	5	7	10
Rs. 55 to 100	7	10	15
Rs. 101 to 250	..	15	20
Over Rs. 250	..	7½ per cent of pay	10 per cent of pay

They also recommended local or compensatory allowance at the following rates for employees serving in Bombay and Calcutta and suggested "that Government should make a review of conditions prevailing in other specially costly cities and decide to what extent similar benefits must be extended to staff serving in those cities".

For Bombay and Calcutta:

Pay not exceeding: Rs.	Amount of allowance Rs. as. p.
35	5 0 0
35—60	7 8 0
61—80	10 0 0
81—140	12 8 0
141—200	15 0 0
201—300	17 8 0
301—500	20 0 0

The Commission observed:

"....Rs. 55 and 90 would seem to represent a reasonable living wage for a working class family and a middle class family respectively, at a cost of living index of about 260. It must be remembered that the estimates of minimum requirements above referred to relate to a period when the employee may be reasonably expected to have at least two children to support besides his wife. This will roughly be about the seventh or eighth year of his service even according to Indian conditions. As we are providing for an incremental scale in nearly all cases, an employee who *starts* with a total income (including dearness allowance) of Rs. 55 (or Rs. 90 in a middle class family) would, in fact, be receiving an additional remuneration by the time he reaches the seventh or eighth year of his service" 2.

2. Pages 32 and 33 of their Report.

64. Mr. R. Gupta, I.C.S., made an award regarding the Imperial Bank of India which was published by the Government of West Bengal on the 4th August 1947. The principal scales for the clerical staff were :

Grade II (Junior scale) : Rs. 70—4—126—E.B.—130—5—175.

Grade I (Senior scale) : Rs. 100—8—180—E.B.—10—250.

65. In 1948 Mr. S. C. Chakravarty, in another award regarding the Imperial Bank of India, awarded dearness allowance at 40 per cent, of the basic salary, subject to a minimum of Rs. 50 for the clerical staff.

66. In December 1947 the Government of West Bengal published an award given by Mr. S. K. Sen regarding the Calcutta Branches of the Central Bank of India, Limited, in which he followed the Divatia award except that the minimum dearness allowance was increased to 35 per mensem for the cleracil staff. The learned Adjudicator also allowed a house rent allowance at the following scale :

Where pay does not exceed Rs. 100—Rs. 15.

Where pay exceeds Rs. 100 but not Rs. 200—Rs. 20.

Where pay exceeds Rs. 200—10 per cent of the pay.

67. In another award, published by the Government of West Bengal in August 1948 Mr. P. R. Mukherji fixed the scales of pay for the clerical staff of the Hindustan Commercial Bank as in the Divatia award, subject to a similar amendment of the minimum dearness allowance.

68. The following table compares the emoluments of an employee at the beginning of his service under the awards discussed above and the Pay Commissioner's Report :—

	Pay Rs.	Dearness allowance Rs.	House rent allowance Rs.	Compensatory allowance Rs.	Total Rs
Rajadhyaksha J's Postal and Telegraph award (1946).	..	..	..	..	120—125 (Calcutta and Bombay). 100—105 elsewhere.
Mr. B. B. Singh's award (1947).	75 60 50	25 20 18	.. .. ..	.. .. ..	68—100
Divatia award (1947) ..	65 55	30 25	.. ..	.. ..	95 80
Mr. Gupta's and Mr. Chakravarty's awards (1947—48).	70	50	..	..	120
Mr. Sen's award (1947) ..	65	35	15	..	115
Mr. Mukherji's award (1948)	65 55	35	..	..	100 90
Pay Commission's Report (1947).	55	35	15 10 7	7—8	97 to 112—8

69. These totals converted to the base year 1944 chosen by us would roughly yield the following results :

	Rs.
(1) Rajadhyaksha J's award (indices for Bombay and Sholapur)	110—115 (Calcutta and Bombay) 95—100 (elsewhere).
(2) Mr. B. B. Singh's award (indices for Kanpur)	56—83
(3) Divatia award (indices for Bombay)	81—68
(4) Mr. Gupta's and Mr. Chakravarty's awards (date taken 1947 : Indices for Calcutta).	108
(5) Mr. Sen's award (indices for Calcutta)	104
(6) Mr. Mukherji's award (indices for Calcutta)	82—74
(7) Pay Commission's Report (indices for Bombay and Cuttack)	83—96

70. It will have to be remembered that the figure given in (1) are based on working class minimum balanced budgets, (2) those in (4) and (5) relate to the Imperial Bank of India and the Central Bank respectively and those in (6) to a bank which belongs to class C. The Divatia award was terminated under the provisions of the Bombay Industrial Relations Act, 1946 by the employees of a number of banks, and certain banks, in view of the rising cost of living, raised the minimum limit of dearness allowance. It would be instructive also to see the amounts of starting salary and allowances granted by awards concerning commercial firms other than banks in different parts of India.

A few examples are given below :

Name of concern	Reference	Pay	D.A.	Other allowances.	Total
West Bengal—					
		Rs.	Rs.	Rs.	Rs.
Cotton Textile Industry in West Bengal.	Indian Labour Gazette September, 1948.	60 (Non-matriculates)	35	..	95
		70 (Matriculates)			105
Engineering Industry in West Bengal.	Indian Labour Gazette September, 1948.	55 (Non-matriculates)	35	..	90
		60 (Matriculates)			95
		70 (Graduates)			105
Gladstone Lyall and Co., Ltd.	Calcutta Gazette Extra, 24-4-1949.	70	55	..	125
Liverpool and London and Globe Insurance Co., Ltd., and allied concerns.	Gazette of India Extra. 6-9-1949, p. 1563.	70	55	..	125
Bombay—					
Bombay Gas Co., Ltd.	1948 I.C.R. (Bom.), p. 781.	75	50	..	125
Bombay Life Assurance Co., Ltd.	1949 I.C.R. (Bom.). p. 958.	75	40	..	115
British Insulated Callender's Cables, Ltd.	1949 I.C.R. (Bom.), p. 909.	75	63	..	138
Ford Motor Co. of India Ltd.	1948 I.C.R. (Bom.), p. 419.	75	Govt. or existing existing scale, whichever is greater.		
Greaves Cotton and Crompton Parkinson, Ltd. and allied concerns.	1948 I.C.R. (Bom.), p. 223.	75 90 (Graduates)	Do		

Name of concern	Reference	Pay	D.A.	Other allowances.	Total
		Rs.	Rs.	Rs.	Rs.
Indian Vegetables Products, Ltd.	1949 I.C.R. (Bom.), p. 661.	70	65	..	135
Premier Construction Co., Ltd., and allied cencerns.	1949 I.C.R. (Bom.), p. 703.	75	40	..	115
Standard Vacuum Oil Co.	1948 I.C.R. (Bom.), p. 736	75 60	As paid before		135
Tata Oil Mills Co., Ltd.	Bombay Govt. Gazette, dated 8-12-1949, pp. 2095—2162.	75	63	..	138
United Motors (India), Ltd.	1949 I.C.R. (Bom.), p. 253.	70	Existing D.A. [*plus* Rs. 8]		

71. It would be useful to give here some of the Government Secretariat rates of pay for a new entrant, as at least in the biggest banks the staff is recruited from the same sections of the community as in the Secretariats and one may reasonably expect the staff in both cases to have the same degrees of intelligence, education and efficiency and same standards of living and to be remunerated on almost similar scales.

Central Government Secretariat and attached offices.

	Pay	D.A.	Other allowances	Total
	Rs.	Rs.	Rs.	Rs.
Third Division clerk	55	45	7—8 *plus* 15	122—8

In the departments of Income-tax, Customs and Excise (Central) the lowest emoluments appear to be the same.

Bombay Government Secretariat and attached offices.

Lower Division clerk	75	45	..	120

West Bengal Government Secretariat.

Lower Division Assistant ..	80	35	9—8 to 13	124—8 to 128

Madras Government Secretariat.

Lower Division clerk	51	22	7	80

Madhya Pradesh Government Secretariat.

Lower Division clerk	50	30	1—8 extra D.A.	81—8

Assam Government Secretariat.

Lower Division clerk	75	15	6 (extra D.A.)	96

Bihar Government Secretariat.

Lower Division Assistant ..	75	30	4	109

468

72. The Reserve Bank of India pays the following emoluments to a clerk in the first year of his service at Bombay :

Pay	D.A.	Compensatory allowance	Total
Rs.	Rs.	Rs.	Rs.
75	45	10	130

Most of the important banks are either bound by or have adopted one or other of the existing awards regarding banks. We give below the scales of emoluments at present being paid by some of the other banks to a clerk in the first year of his services :

	Name of Bank	Pay	D.A.	Other allowances	Total
		Rs.	Rs.	Rs.	Rs.
1.	Agricultural and Industrial Bank, Ltd., (Coondapoor)	25	25	..	50
2.	Andhra Bank, Ltd. (Madras)	40	30	Rs. 5 plus City allowance Rs. 10	85
3.	Bank of Bihar, Ltd. (Bihar)	50	35	..	85
4.	Bank of Maharashtra, Ltd. (Outside Bombay City)	40	35	..	75
5.	Bengal Central Bank, Ltd., (Delhi)	50	30	..	80
6.	Bharat Bank, Ltd. (Bihar)	50	20	..	70
7.	Bharata Lakshmi Bank, Ltd.. (Madras City) ..	35	25	..	60
8.	Canara Bank, Ltd. (Belgaum, Dharwar, Erode) ..	50	..	5	55
9.	Comilla Banking Corporation, Ltd. (Calcutta) ..	50	25	..	75
10.	Habib Bank, Ltd., Madras	55	25	..	80
11.	Hind Bank, Ltd. (Bombay and Calcutta) ..	60	30	..	90
12.	Hindustan Commercial Bank, Ltd. (Bihar) ..	55	25	..	80
13.	Hindustan Mercantile Bank, Ltd. (Akola) ..	40	20	..	60
14.	Indian Bank, Ltd. (Madras)	50	35	..	85
15.	Indian Overseas Bank, Ltd. (Madras)	40	22—8	..	62—8
16.	National Savings Bank, Ltd. (Poona and Surat) ..	41	25	..	66
17.	New Citizen Bank of India, Ltd. (Poona, Sholapur and Nagpur).	45	25	..	70
18.	United Commercial Bank, Ltd. (Bihar)	60	30	..	90
19.	Vijaya Bank, Ltd. (Mangalore)	30	14	9	53

SECTION III

Minimum Basic Pay

73. A most difficult task before us is the ascertainment of the minimum salary of a clerk at the beginning of his career in the three areas I, II and III in terms of the base year 1944. In 1946 Mr. Justice Rajadhyaksha came to the conclusion, on the basis of working class minimum balanced budgets, that the cost of living of an average lower middle class family (with a monthly income between Rs. 75 and 125) at that date was between Rs. 120 and 125 in places like Calcutta and Bombay and between Rs. 100 and 105 in other urban and rural areas. This result was arrived at by the application of an 80% co-efficient, which was derived from the following mode of reasoning :

> "In 1922-24 there was a middle class family budget enquiry in Bombay and it was found that a family consisting of 4.58 persons spent Rs. 138-5-0 per month (See pages 31 and 34 of the Report). But the average expenditure of the middle class family in the lowest income group (having incomes between Rs. 75 and 125) per month was Rs. 103-4-0. In 1923 the cost of living index

figure was 155 whereas in 1938-39 it was 104. According to these index numbers the cost of living of the same family would be $\frac{103 \times 104}{155}$ — Rs. 69 in 1938-39. The lowest income group in the middle class budget enquiry consisted of 3.29 consumption units. Therefore for an average family of 3 consumption units, the expenditure required in 1938-39 would have been $\frac{69 \times 3}{3.29}$ — Rs. 63. According to the finding of the Rau Court of Enquiry a working class family consisting of 3 consumption units required Rs. 35 for minimum subsistence. It follows therefore that the proportion of the relative cost of living of a working class family to that of a middle class family of 3 consumption units is 35 : 63, *i.e.*, the cost of living of a middle class family is about 80% higher than that of a working class family ".[3]

It seems to us very likely, particularly in view of the increase in the income of the working classes in most towns since 1939, that the co-efficient applicable today is appreciably less than 80%. Mr. Justice Rajadhyaksha deplored the fact that there had been no official family budget enquires with respect to lower middle classes and that the non-official enquiries had not arrived at any dependable conclusions on the subject. It was this state of things that led him to adopt the co-efficient suggested by Mr. Deshpande. This Tribunal, however, is more fortunate in having before it the detailed results of Mr. Subramanian's investigation into budgets of middle class employees of the Central Government for the period November 1945 to August 1946. For practical purposes we think that we should be justified in regarding these results as pertaining of the year 1946.

74. In Mr. Justice Rajadhyaksha's award regarding the Posts and Telegraphs Department of the Central Government and Mr. Justice Divatia's award regarding banks in Bombay an average employee's family in the 8th year of service was taken to consist of 3 consumption units (1 unit for the head of the family, .8 unit for his wife and .6 unit for each of two children). Slightly higher figures are given in Mr. Subramanian's Report for Bombay for income groups having income below Rs. 100 per month (3.1 c. us) and between Rs. 100 and Rs. 150 (3.04 c. us); while the number of consumption units for the said group for Calcutta are given in that Report as 3.5 and 4.4 respectively and that for Delhi for the latter group is shown as 3. At pages 83, 60 and 128 and pages 78, 54 and 123 we find respectively the average monthly expenditure and the average value of monthly concessions for the lowest groups as follows :

	Average size of family in c. us	Average monthly expenditure	Average monthly concessions	Total
Income Group below Rs. 100				
Bombay	3.1	104-11	22-2	126-13
Calcutta	3.5	115-4	11-7	126-11
Income Group Rs. 100-150				
Bombay	3.4	189-4	24-1	213-5
Calcutta	4.76	166-12	13-14	180-10
Delhi	3.3	182-12	8-3	190-15

3. Rajadhyaksha J's award regarding the Posts and Telegraphs Department of the Central Government (1946), page 64.

In the first group the aggregate of the two totals is Rs. 253-8, and the aggregate of the consumption units per family in the two cities is 6.6. Thus for Bombay and Calcutta the average total monthly expenditure per consumption unit (including concessions) is Rs. 38-7. The corresponding figure for the second group (for the three cities is Rs. 51. It was contended that Mr. Subramanian's calculations for the lowest income group pertain *inter alia* to "a large body of clerical workers with a rather low basic salary (as low as Rs. 30 per month in some cases)".[4] But actually the minimum monthly incomes per family in the budgets investigated varied between Rs. 74 and Rs. 87 (leaving out Delhi),[5] such income being Rs. 82-11 at Calcutta and Rs. 74-1 at Bombay, and the lowest monthly income appearing in the budgets investigated for Delhi being Rs. 126-14. In view of the fact that no budget below Rs. 124-14 for forthcoming from Delhi and of the large extent of monthly deficit in the income group "below Rs. 100" (Rs. 32-9 at Calcutta, Rs. 30-10 at Bombay), it is probable, as was suggested in the Posts and Telegraphs award, that there has been a deterioration of the pre-war standrad of living. In fact, as a reference to Tables XI and XII at pages 18 of Shri Subramanian's Report shows, the middle class, as a class, appears to be in debt to a surprising extent at every stage of income level except in the highest income-groups (Rs. 300 and above) at Madras and Delhi and in the States of Bengal, Assam, Madras and Madhya Pradesh where either the budgets are just balanced or a small saving is possible. In the cities of Bombay and Calcutta 78 and 77 per cent of the budgets examined (400 and 664) respectively showed deficits the monthly deficit per family (for all income groups) being given respectively as Rs. 41-6 and Rs. 46-5.

75. In view of these considerations we think that we should be justified in coming to the conclusions (1) that the figures of actual expenditure given by Mr. Subramanian can be used as a basis for a subsistence level of wages and (2) that the monthly requirements of a lower middle class employee at Bombay, Calcutta or Delhi (for 1946) would be something higher than the figure of Rs. 38-7 arrived at above, say, Rs. 40 per consumption unit. This corresponds with the lowest figure for Bombay and Calcutta arrived at by Mr. Justice Rajadhyaksha for three units, *viz.*, Rs. 120 as the requirement of a lower middle class family (consisting of 3 consumption units) in 1946. Mr. Justice Divatia held that the lowest total emoluments for an employee of a small bank should be Rs. 80 (Rs. 55 *plus* dearness allowance Rs. 25), but he did not seem to think that any differentiation between 1946 and 1947 was necessary though the cost of living index figure had gone up from 246 to 265, *i.e.*, by about 8%. If Rs. 40 represented the requirements of one consumption unit the Divatia award porvided for two consumption units in the case of a new entrant.

76. We adhere to the two conclusions given above, in spite of the argument addressed to us on behalf of certain banks that certain "Miscellaneous" items of expenditure included in Mr. Subramanian's statistics do not normally enter into the conventional concept of the subsistence level, *e.g.*, children's education, religious ceremonies, newspapers, entertainments, club subscriptions, holiday expenses, remittances to dependents, provident fund, life insurance, taxes, maintenance of own conveyance, debt disbursement, pansupari, cigarettes and tobacco. Items like life insurance and provident fund, it was further argued, should not have been grouped under expenditure, being forms of savings. It has, however, to be remembered that the subsistence standard of pay, for a middle class worker,

4. Report on an Enquiry into the Family Budgets of Middle Class Employees of the Central Government, 1949, p. (iii).

5. *Ibid*, pp. 49, 73, 97, 141, 173, 195, 217, 249, 273 and 295.

cannot and should not mean, as perhaps in the case of the working class, merely such pay as would suffice to keep body and soul together, *i.e.*, provide only for food, clothing, fuel and house-rent; that the subsistence level must have reference to the minimum requirements regarding such items as enter normally and essentially into the workers' standard of living; that the expenditure shown against such items as have been objected to are exceedingly meagre; and that the fact that an employee is compelled, month after month, to incur a fairly heavy deficit, far from showing that he is indulging in extravagance or improvidence, rather suggests a sub-subsistence level of existence, if such a phrase may be used, compelling him not only to live beyond his means but also, in all probability to exhaust his other resources, if any. As to the items of life insurance and provident fund, they no doubt represent saving, but such saving as the employee is compelled to effect in the interests of his family and himself, and as he cannot draw upon for purposes of normal expenditure. The amounts in question having in the first instance to come out of his pocket they have rightly, in our opinion, been included in estimating his expenditure.

77. In our award regarding interim relief for the State of Madras we observed, "A new entrant, particularly in these times, is rarely burdened with a family at the date of his joining service, and the contingency of his having a dependent or two would, in our opinion, be sufficiently met by presuming that such a person has to bear the expenditure of two consumption units".[6] The employees' advocates and representatives have contended that this would not be a fair way of looking at the question of starting pay and that even a new entrant should be presumed to have three consumption units to maintain. It may be mentioned that the conclusion arrived at in the said interim award was a tentative one, reached without hearing any detailed arguments on the point and without intending to affect our final decision. The point is an important one and may affect the method of fixing the initial pay in other industries also. It may be noted that even in the Madras interim relief award it was stated, "With regard to certain items the cost in the case of two consumption units living together would be proportionately more than in the case of a larger family". An employee, at the beginning of his career, is in the income group "below Rs.100" and in the eighth year he would be in the income group "Rs. 100 to Rs. 150". If he is allowed in the beginning two consumption units according to the standard of the first group and in the eighth year to three consumption units according to that of the second group, the difference becomes much greater than in any of the existing systems of scale-pay that have been brought to our notice. In a large majority of cases the pay for the first year is more than two-thirds of the pay for the eighth year, *i.e.*, more than the employee would get for two consumption units calculated at the standard of the eighth year. A few examples are given below:

	1st year pay Rs.	8th year pay Rs.
Central Government Secretariat	55	76
Bombay Government Secretariat	75	110
Engineering Industry in West Bengal (Award in Indian Labour Gazette, September 1948) .. .. (*i*) ..	55	72–8
(*ii*) ..	60	77–8
(*iii*) ..	70	98
Standard Vacuum Oil Co., 1948 I.C.R. (Bom.) p. 736	75	110
Premier Construction Co. and allied concerns, 1949, I.C.R. (Bom.) p. 703	75	112
British Insulated Calenders' Cables Ltd., 1949, I.C.R. (Bom.) p. 909 ..	75	110
Imperial Bank of India (Mr. Gupta's award)	70	98
Pay Commission's Report [p. 42, scale (a)]	55	76

6. Ministry of Labour's Notification No. LR-2(258)/III, dated the 26th December 1949, published in the *Gazette of India*, Part I, Section I, dated the 31st December 1949, pp. 1790-1793.

78. In the Divatia award, however, the initial pay (Rs. 65 for big banks and Rs. 55 for small banks) is less than two-third of the pay in the eighth year (Rs. 107-8 and 90 respectively). This might appear to indicate that the initial pay fixed in that award was hardly adequate. It seems to us that ordinarily it would not be appropriate to fix an initial pay which is less than two-third of the pay provided for the eighth year; so that where, as in the present case, we can estimate the requirement of one consumption unit from the requirements of a family within the income group of the employee concerned, and he is likely to belong to a higher income group in the eighth year of his service, his requirement in the first year of his service should be something more than that of two consumption units. Without intending to lay down a rule or formulate a definite principle we believe that we are not likely to be much mistaken if we take that requirement as that which would correspond to 2.25 consumption units. On the basis of Rs. 40 per month (in 1946) per consumption unit for a lower middle class employee at Calcutta, Bombay or Delhi, he would require Rs. 90 in the first year of his service.

79. In a subsequent part of this award we intend giving directions as to item 14 (medical aid and expenses) in Schedule II, but we shall not be able to direct under the said item that such relief should be given to all members of a workman's family. We have considered the question whether we should deduct, on this account, what he is shown in Mr. Subramanian's Report to be spending on medical aid and expenses so far as he himself is concerned; and we have decided to make no such deduction. For one thing, the amount so spent would be trifling, between Re. 1 and Rs. 2 per month; for another, an employee of the Central Government, as well as the members of his family, are entitled to free medical attendance and treatment free of charge at hospitals, and inspite of such facilities Central Government employees have been shown to have incurred expenditure on account of medical aid.

80. We shall now proceed to ascertain the minimum requirements of an employee working in a class II area at the commencement of his service. Of the towns which in our judgment should be comprised in class II areas, we think that if we take Sholapur, Kanpur, Nagpur and Jamshedpur we may be said to have made a sufficiently representative selection for our purpose, bearing in mind the limitation imposed on our choice by the towns regarding which the Central Government have been publishing cost of living index figures. The regions in which they are situated are shown respectively in Mr. Subramanian's Report as Bombay Province, United Provinces, C.P. and C.I. and Bihar and Orissa. The total monthly expenditure per consumption unit in an average family in the income group "below 100", is Rs. 29-0, Rs. 26-13, Rs. 27-1 and Rs. 30-8 respectively, yielding an average of Rs. 28-6. To this amount must be added the average of the values of concessions which yield the total of Rs. 50-6 and 17.5 consumption units or Rs. 2-14 per consumption unit. The total average per consumption unit comes, therefore, to Rs. 31-4. In view of the considerations as to the subsistence level already referred to and the fact that though we want to find a clerk's requirements in a number of fairly large towns the statistics we have been obliged to examine are all of the large areas as a whole and not of towns, we think that we should be justified in taking the monthly requirement of one consumption unit for the income group "below Rs. 100" as Rs. 34. A new entrant would then require in 1946 Rs. 34 x 2.25 or about Rs. 77.

81. Class III areas comprise very large tracts and we think that similar calculations are not likely to yield satisfactory results. We are of opinion that for such areas the minimum of Rs. 65 per month may be taken to represent the requirement of a clerk in such areas for the year 1946.

SECTION IV

Scales of Pay

82. It is now necessary that we should ascertain the requirements of a middle class employee, in the areas I, II and III, in the eighth and the final years of his service. The eighth year of service has generally been taken to be the period in which an employee has to maintain three consumption units. As to the span of service, Divatia J in his award fixed a span of 25 years of service at the end of which the maximum pay is attained. The average employee in a bank usually begins his service at the age of 18 to 20 years, so that in his 25th year of service he would be 43 to 45 years of age. Most employees in the clerical staff, we understand, remain in service till their 55th year, so that normally, if the span of the pay scale be 25 years, they would remain on the same pay for the last 10 to 12 years of their service. It is, however, difficult to find any pay-scale in this country extending over a span of more than 25 years; and it is to be also borne in mind that there are selection posts and officers' grades to which the more competent among the elder clerks may reasonably aspire. We, therefore, do not think it necessary to extend the pay scale span beyond 25 years.

83. In the twenty-fifth year of his service an employee would be a member of the income group Rs. 250—300. The number of consumption units in a family per earner in this group is given in Mr. Subramanian's Report as 3.06 at Bombay, 5.5 at Calcutta, 3.55 at Delhi and 4.8 at Madras, giving an average of 4.23. But we think that on the whole it would be legitimate to allow for 4 consumption units (equivalent to two male and one female adults and two minor children in a family of five persons) at the 25th year of service.

84. Now as regards the requirement of an employee in the eighth year of his service in a class I area, he would then be a member of the income-group Rs. 100—150. It has already been found that for Calcutta, Bombay and Delhi the average total monthly expenditure per consumption unit (including concessions) was Rs. 51 in 1946. The monthly requirement on this basis works out at Rs. 153.

85. In the twenty-fifth year of his service an employee would be a member of the income group Rs. 250—300. The following figures from Mr. Subramanian's Report regarding this income group in class I areas are relevant:

Cities	No. of c. us. in average family.	Average monthly expenditure.	Average monthly concessions.	Total
		Rs. as.	Rs. as.	Rs. as.
Calcutta	6.61	327 11	11 2	338 13
Bombay	3.9	306 10	29 10	336 4
Delhi	3.6	299 6	6 0	305 6
TOTAL	14.11			980 7

472

The average total monthly expenditure per consumption unit works out at Rs. 69 = 8.

As we have held above that we can legitimately hold that the employee, towards the end of his service, would have 4 consumption units to maintain his monthly requirement, in 1946, would be Rs. 69 = 8 × 4 or Rs. 278.

86. We thus arrive at the following figures of the minimum requirements of a clerk in 1946:

	1st year (2.25 c.us.) Rs.	8th year (3 c.us.) Rs.	25th year (4 c.us.) Rs.
Class I Areas	90	153	278
Class II Areas	77	..	..
Class III Areas	65	..	..

In the above table the figure 153 appears to be open to this criticism. Rs. 90, the pay for a new entrant in class I areas, is appreciably below two-thirds of Rs. 153; and the covering of the difference between Rs. 153 and Rs. 90, *i.e.*, Rs. 63 in 7 years means an average annual increment of Rs. 9, *prima facie* an excessive figure. The difference between Rs. 278 and Rs. 153, *i.e.*, Rs. 125 if covered in 17 years, gives a smaller average annual increment. This cannot be right; increments should ordinarily rise with the length of the years of service. We are, therefore, inclined to regard the view that an employee has to maintain three consumption units in the eighth year of his service as one that fails to conform to the requirements of a normal scale of pay, at least in the case of middle class employees, circumstanced as they are today. It is likely that under the stress of circumstances a large number of middle class employees are unable to marry early enough in life to have two children in the eighth year of their service—the assumption underlying the theory of three consumption units in that year; or there may be other explanations of this anomaly. It would be best, therefore, in our opinion, to take only the initial and the final figures of requirements and to construct scales of pay on such basis.

87. We have now to convert the figures Rs. 90, Rs. 278, Rs.77 and Rs. 65 to the base year 1944. We first take the two figures for Area I. The index number for Delhi was 107 with base 1944 = 100 and that for Bombay with the same base would be 109. In Calcutta there was a fall in the cost of living from 1944 (index figure 278) to 1946 (index figure 275); its index figure for 1946 with base 1944 = 100 would be 99. The average of the three figures 107, 109 and 99 is 105. Therefore, in order that the pay appropriate to 1946 may be converted to the 1944 base it would have to be multiplied by the co-efficient $\frac{100}{105}$ or $\frac{23}{21}$. This process would give the following scale of requirements (for 1944) of a clerk in a bank of class C in class I areas:

	Rs.
1st year	86
25th year	265

88. For converting the figure Rs. 77 (Areas II) to the base year 1944 we take the index figures for Sholapur, Kanpur, Nagpur and Jamshedpur for 1944 and 1946; they were respectively, 276, 314, 267 and 100 (total 957) in 1944 and 290, 328, 285 and 103 (total 1006) in 1946. We have thus to multiply Rs. 77 by $\frac{957}{1006}$ or roughly $\frac{19}{20}$ by which process we get Rs. 73 as the monthly requirement in Area II in 1944. For Areas III also we may reduce the 1946 figure Rs. 65 by about 5% and thus get Rs. 62 as the monthly requirement in Area III in 1944.

89. It would be possible to ascertain roughly, largely on the basis of such calculations as made above, the requirements of such an employee in class II areas in the twenty-fifth year of his service. We are, however, of opinion that reasonably reliable results can be attained by the easier method of keeping the same proportion between the requirements in the twenty-fifth year in the three areas on the basis of the proportion that obtain in the requirements for the first year of service. Such a procedure would no doubt presuppose (1) that in all the three areas the ratios between the number of consumption units at the two stages are the same and (2) that the ratios of increase in the requirements per consumption unit at those stages are also the same throughout the country. We do not think that these two propositions are so opposed to reality as to render our conclusions illegitimate or invalid.

90. We thus arrive at the following figures of the requirements of a clerk in a bank of class C :

	1st year	25th year
	Rs.	Rs.
Class I Areas	86	265
Class II Areas	73	225
Class III Areas	62	191

On the basis of these figures the scales of pay for clerks serving in banks of class C will have to be constructed.

91. We next take up the question of pay scales for banks of classes A and B. In the Divatia award there is a difference of ten rupees between the lowest pay for a clerk in a big bank and that in a small bank, and there is a difference of Rs. 25 between the corresponding amounts of pay in the case of a clerk at the end of his service. We think that these differentials between the highest and the lowest categories of banks in class I areas may be taken as adequate, though it may be argued that they are on the low side, as in a place like Bombay and Calcutta the difference between a subsistence level wage and a wage sufficient to ensure an appreciable amount of comfort and decent living must be, even for 2.25 consumption units, more than ten rupees a month. There would be comparatively large differences in the scales even for C class banks in the three classes of areas, and the introduction of more accentuated differences between the scales applicable to the different classes of banks in each class of areas would be greatly disliked by the employees. Owing to the differences in the costs of living in the three classes of areas we have been obliged to show the differences in question in the pay scales of C class banks ; in the other cases we think that we need not go beyond the limits set by Mr. Justice Divatia to the differences between the highest and the lowest scales of pay. We fix the differentials in the three classes of areas for the banks in classes A and B for the first and the twenty-fifth year of service, as compared with the scales of pay in class C, as follows :

Years of Service	Class I Areas		Class II Areas		Class III Areas	
	Class A banks	Class B banks	Class A banks	Class B banks	Class A banks	Class B banks
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
1st year	10	6	9	5	8	4
25th year	25	20	23	18	21	16

We, therefore, fix the following limits of the scales of pay applicable to clerks serving in banks of classes A and B:

	Class I areas	Class II areas	Class III areas
	Rs.	Rs.	Rs.
Class A—			
1st year	96	82	70
25th year	290	248	212
Class B—			
1st year	92	78	66
25th year	285	243	207

92. We shall now proceed to construct the nine pay scales. In doing so we shall observe two principles, namely, that increments should normally show a rising trend and that a time scale should provide for a saving wage after the fifteenth year of service[7].

Class 'A' Banks—

Class I .. .. areas .. Rs. 96—6—132—7—174—8—190—205—9—250—10—290
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

Class II .. .. areas .. Rs. 82—5—112—6—148—7—162—172—8—212—9—248
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

Class III .. .. areas .. Rs. 70—4—94—5—124—6—136—145—7—180—8—212
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

Class 'B' Banks—

Class I .. .. areas .. Rs. 92—6—128—7—170—8—186—200—9—245—10—285
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

Class II .. .. areas .. Rs. 78—5—108—6—144—7—158—167—8—207—9—243
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

Class III .. .. areas .. Rs. 66—4—90—5—120—6—132—140—7—175—8—207
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

Class 'C' Banks—

Class I .. .. areas .. Rs. 86—5—116—6—152—7—166—180—9—225—10—265
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

Class II .. .. areas .. Rs. 73—5—103—6—139—6½—152—160—7—195—7½—225
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

Class III .. .. areas .. Rs. 62—4—86—5—116—5½—127—135—6—165—6½—191
(6 yrs.) (6 yrs.) (2 yrs.) (1 yr.) (5 yrs.) (4 yrs.)

SECTION V

Uniform Basic Scales

93. One part of item 1 in Schedule II is, "whether, if basic scales are recommended, such scales of pay of particular categories should be uniform all over India and whether the differences in the cost of living of the various centres,

7. Report of the Central Pay Commission (1947), p. 37.

should be adjusted by the grant of compensatory allowances." We are in sympathy with the point of view which has given rise to this question, but we think that if we are to give effect to it, it would not be sufficient to make up differences merely by the grant of compensatory allowances. If we are to take the scales of pay prescribed for class C banks in class III areas as the basic for the whole of India, we would have to add to it, for other classes of banks, and areas, two classes of allowances, namely, (1) basic allowances showing the differences between the scales for class C banks in class III areas on the one hand and on the other those for B and A classes of banks for the same areas and (2) compensatory allowances for each class of banks to compensate for higher costs of living in class I and class II areas. We think that such a procedure would needlessly complicate the scheme of pay scales we have laid down and that it would further render difficult any reference to such scales without raising doubts whether the basic scales for the whole of India, with or without the basic and compensatory allowances, was intended. We are, therefore, of opinion that the question raised must be answered in the negative; and it is our intention that any stage in the pay scales fixed by us should be referred to as the basic pay.

476

CHAPTER V

Scale of Pay—Subordinate Staff.

94. It now remains for us to fix the scales of pay of the subordinate (non-clerical) staff. Mr. B. B. Singh fixed the scales for forty banks in the United Provinces as follows:

	Rs.
Class 'A' banks	25—1—35
Class 'B' banks	25—½—30
Class 'C' banks	20—½—25

Mr. Justice Divatia fixed the scale of Rs. 30—2—50—1—65 for the big Bombay banks with the proviso that chokras below 18 should get a start of Rs. 25 till they attained such age. For the small banks he laid down the scale of Rs. 24—1—35—2—55 with the proviso that chokras should start on Rs. 19. Mr. R. Gupta fixed several scales for different categories of the subordinate staff of the Imperial Bank of India, *e.g.*, messengers, cash coolies, sweepers, farashes, head messengers, head cash coolies, malis, punkha pullers, lorry drivers, duftries, record suppliers, compositors, the lowest scale (for farashes, sweepers, cash coolies, etc.) being Rs. 30—2—60 and the highest (for lorry drivers and head messengers in Calcutta) Rs. 70—3—100.

95. The Central Pay Commission recommended three scales for employees comprised in Class IV, namely, Rs. 30—½—35, Rs. 35—1—50, and Rs. 40—1—50—2—60, the second and the third scales being intended for semi-skilled and skilled workers according to the nature of their job and the extent of their skill. In the Central Government Secretariat two scales or grades exist, namely, Rs. 30—½—35 (for peons, etc.) and Rs. 35—1—50 (for jamadars and daftries). In the Bombay Secretariat there are three scales or grades: Rs. 35—½—40 (for peons and messengers), Rs. 40—1—50 (for naiks) and Rs. 50—1—55 (for havildars); and in the mofussil in the State of Bombay, the scales are: Rs. 30—½—35 (for peons), Rs. 35—1—45 (for naiks) and Rs. 45—1—50 (for havildars), boy peons being paid Rs. 25. In other States the scales are lower, the peons' scale beginning with Rs. 22-8-0 in Bihar, Rs. 20 in West Bengal, Rs. 18 in Madras, Rs. 20 in Madhya Pradesh and Punjab (India), Rs. 18 in Orissa and Rs. 22 in Assam. We give below tre effect of certain awards regarding industrial concerns:

Name		*Pay Scale* Rs.
Bombay—		
Bombay Gas Company, Ltd. 1	Chokras	25—1—30.
	Peons and hamals ..	30—2—50—1—60.
British Insulated Callender's Cables, Ltd. 2	Sepoys	30—1½—36—E.B.—2—50—3—60.
Caltex (India), Ltd. 3	Sepoys	30—2—50—1—65.
Greaves Cotton and Crompton Parkinson and allied concerns 4	Sepoys	35—1—45—2—55.
	Hamals and sweepers ..	35—1—45.

1. 1948 I.C.R. (Bom.), p. 781.
2. 1949 I.C.R. (Bom.), p. 909.
3. *Ibid.*, p. 510.
4. 1948 I.C.R. (Bom.), p. 223.

Name		Pay Scale Rs.
Bombay—contd.		
Oriental Government Security Life Assurance Co., Ltd. 5	Sepoys, hamals and watchmen.	30—2—60.
	Sweepers	30—1—45.
	Naiks, mukadams ..	42—2—64.
	Havildar	48—3—75.
Premier Construction Co., Ltd., and allied concerns. 6	Peons, watchmen and hamals.	30—2—60.
	Sweepers	30—1—50.
Standard Vacuum Oil Co. 7	Peons and watchmen ..	30—2—44—E.B.—3—65
	Sweepers and cleaners ...	30—2—50.
United Motors (India), Ltd. 8	Peons	35—1—40.
	Peons in showrooms. ..	30—1—50.
Madras—		
Municipal Corporation, Madras		20—1—25.
West Bengal—		
Gladstone Lyall & Co., Ltd. 9		40—1—60.
		35—1—50.
		30—1—40.
Engineering Industry in West Bengal 10 ..	Peons	25—1—40.
	Darwans	30—1—45.

In order to get a total picture of the emoluments one has to look at the dearness allowance in each case, which does not appear to have been fixed with reference to any particular basic year or to bear the same proportion to the basic pay as the corresponding dearness allowance of a clerk working in the same office bears to his basic pay. The total monthly emoluments in the initial year vary, under the awards of Mr. Singh, Mr. Gupta and Divatia J, between Rs. 36 and Rs. 55; such emoluments according to the Central Pay Commissioner's Report, the Central Secretariat scale and the Bombay Secretariat scale would respectively be Rs. 70, 80 and 76 and under the scales obtaining elsewhere in the State of Bombay vary between Rs. 65 and 70 and elsewhere in India fall to as low a figure as Rs. 36. Such emoluments, in accordance with some awards relating to commercial firms and the Municipal Corporation, Madras (referred to above), would vary between Rs. 44 and Rs. 95.

96. We have in connexion with this question examined eighteen of the reports prepared by Mr. S. R. Deshpande, Director, Cost of Living Index Scheme, under the Ministry of Labour of the Central Government, based on inquiries into family budgets of industrial workers at twenty places in different parts of India; Bombay, Ahmedabad, Sholapur, Jalgaon in the State of Bombay, Howrah and Bally and Kharagpur in the State of West Bengal, Jharia, Jamshedpur, Monghyr and Jamalapur and Dehri-on-sone in the State of Bihar, Ludhiana in the State of Punjab (India), Gauhati and Tinsukia in the State of Assam, Jubbulpur and Akola in the State of Madhya Pradesh, Cuttack and Berhampur in the State of Orissa, and the city of Delhi. Most of the inquiries were conducted in 1944 or as near 1944 as would make the result valid, for all practical purposes, for that year, and in two or three cases where the inquiries were made in 1945 or largely in 1945 the results would differ very slightly

5. 1949 I.C.R. (Bom.), p. 563.
6. 1949 I.C.R. (Bom.), p. 703.
7. 1948 I.C.R. (Bom.), p. 736.
8. 1949 I.C.R. (Bom.), p. 253.
9. *Calcutta Gazette*, extra, April 22, 1949.
10. *Indian Labour Gazette*, September, 1948, p. 171.

from what they would have been had the inquiries been in 1944. We give below a statement prepared from the statistics embodied in Mr. Deshpande's Reports on such matters as are relevant to our present purpose :

States and Towns	Period of enquiry	Approximate figure at which balancing attained*	Number of consumption units	Requirements per consumption unit (figures within brackets are calculated to the nearest rupee).
		Rs.		Rs.
Bombay—				
Bombay	22-1-1944 to 28-2-1945.	75	2.65	28-4-9 (28/-)
Ahmedabad	22-1-1944 to 28-2-1945.	85	2.75	30-14-6 (31/-)
Sholapur	22-1-1944 to 28-2-1945.	154	7.36	20-14-9 (21/-)
Jalgaon	22-1-1944 to 21-1-1945.	62	4.93	12-9-2 (13/-)
West Bengal—				
Howrah and Bally	28-7-1943 to end of July 1944.	32 (per week)	6.09	5-4-0 (per week) : 22-8-0 (per month) (23/-).
Kharagpur	End of July 1943 to end of July 1944.	147	4.63	31-11-7 (32/-)
Bihar—				
Jharia	16-7-1945 to 25-11-1945.	8 (per week)	2.48	3-3-7 (per week) 13-3-1 (p.m.) (14/-)
Jamshedpur	February to June 1945.	35	2.24	15-10-0 (16/-)
Monghyr and Jamalpur	9-5-1944 to 31-10-1944.	96	6.26	15-5-4 (15/-)
Dehri-on-sone	7-11-1944 to 31-1-1945.	35	3.63	9-10-3 (10/-)
Punjab—				
Ludhiana	End of January 1944 to end of April 1945.	92	4.15	22-2-8 (22/-)
Assam—				
Gauhati	April 1944 to October 1945.	22	2.47	8-14-6 (9/-)
Tinsukia	Not mentioned.	30	2.64	11-5-9 (11/-)

* Including amounts spent on interest on loans, insurance premia and remittances to dependents, where available.

States and Towns	Period of enquiry	Approximate figure at which balancing attained	Number of consumption units	Requirements per consumption unit (figures within brackets are calculated to the nearest rupee).
		Rs.		Rs.
Madhya Pradesh—				
Jubbulpore	April 1944 to 1945.	85	4.37	19-7-2 (19/-)
Akola	April 1944 to April 1945.	45	2.90	15-8-3 (16/-)
Orissa—				
Cuttack	15-12-1944 to 15-8-1945.	95	5.98	15-8-9 (16/-)
Berhampur	15-12-1944 to 15-9-1945.	134	6.40	18-11-7 (21/-)
Delhi—				
Delhi	October 1943 to October 1944.	53	2.83	18-11-7 (19/-)

97. We have first to ascertain the basic requirement for class I areas. The requirements per consumption unit for Bombay, Howrah and Bally and Delhi are respectively Rs. 28, Rs. 23 and Rs. 19 per month. The figure for Delhi is somewhat low in view of the statistics to be found in Mr. Subramanian's enquiry on middle class employees of the Central Government. The reason is probably that Mr. Deshpande's enquiries were confined to seven working class localities only, but we do not know whether the members of the subordinate staff of banks at Delhi are also residents of the said localities. As Bally is close to Howrah and both are not far from Calcutta, we think we should be justified in taking the figure for Howrah and Bally as correct for Calcutta for which no enquiries appear so far to have been made. Taking the average of the three figures given above, we get Rs. 23 as representing the monthly requirement for one consumption unit in Class I areas. At the rate of 2.25 consumption units for a new entrant we get Rs. 52, which would represent the requirement of a workman in the subordinate services in the first year of his service in a class C bank in the said area.

98. For class II areas we take the requirement per consumption unit in the three towns of Sholapur, Jubbulpore and Cuttack, *viz.*, Rs. 21, Rs. 19 and Rs. 16, yielding an average of Rs. 19. At the rate of 2.25 consumption units we get Rs. 43 for a new entrant. For class III areas we may roughly take Rs. 35 as the corresponding requirement of a workman in the subordinate service.

99. All the three figures arrived at, namely Rs. 52, Rs. 43 and Rs. 35 are related to the basic year 1944. We think there should exist a difference of Rs. 8, Rs. 6 and Rs. 5 respectively between the initial wages in a class C bank and a class A bank in class I, class II and class III areas. We fix the following table, accordingly, of the initial wages in the three areas for the three classes of banks:

	Class A banks	Class B banks	Class C banks
	Rs.	Rs.	Rs.
Class I areas	60	56	52
Class II areas	49	46	43
Class III areas	40	38	35

100. We have now to fix the increments in the different cases. We think that the following rates of increments would be appropriate and fix them accordingly :

Years of Service	Areas Class	Rates of annual increments: Class A banks	Class B banks	Class C banks
		Rs. A.	Rs. A.	Rs. A.
Class II .. .. areas ..	Rs. 46—1—60—1½—85 (14 yrs.) (10 yrs.)			
Class III .. .. areas ..	Rs. 38—1—52—1½—67 (14 yrs.) (10 yrs.)			
Class C banks—				
2—15	I, II and III	1 0	1 0	0 8
16—25	I, II and III	1 8	1 8	1 0

101. We, accordingly, direct that the basic scales of pay shall be as follows :

Class A banks—

Class I .. .. areas .. Rs. 60—1—74—1½—89 (14 yrs.) (10 yrs.)

Class II .. .. areas .. Rs. 49—1—63—1½—78 (14 yrs.) (10 yrs.)

Class III .. .. areas .. Rs. 40—1—54—1½—69 (14 yrs.) (10 yrs.)

Class B banks—

Class I .. .. areas .. Rs. 56—1—70—1½—85 (14 yrs.) (10 yrs.)

Class I .. .. areas .. Rs. 52—½—59—1—69 (14 yrs.) (10 yrs.)

Class II .. .. areas .. Rs. 43—½—50—1—60 (14 yrs.) (10 yrs.)

Class III .. .. areas .. Rs. 35—½—42—1—52 (14 yrs.) (10 yrs.)

102. In certain awards, *e.g.*, the Divatia award, chokras, hamals and boy messengers have been given a lower scale of pay than other members of the subordinate staff. We think that this is right in principle, as such employees are generally less than 18 years of age. We accordingly direct that hamals, chokras, messengers or office boys less than 18 years of age should get the general scale fixed for the subordinate staff reduced by Rs. 5 per month and that the reduced scale should apply to them until they attain 18 years of age.

103. In Mr. R. Gupta's award two categories of workmen in the cash department have been placed between the scales fixed for the subordinate staff and the clerical staff, namely,

Poddars .. .. Rs. 45—3—90
Collecting sarkars .. .. .. Rs. 45—3—90

Another such class of workmen referred to by the Indian Bank are the *gollas*, said to correspond to money testers in the Imperial Bank of India. Such employees appear generally to be drawn from the middle classes, but their work is such that it can be done by intelligent members of the subordinate staff also. We think that Mr. R. Gupta was right in assigning to them a position intermediate between the clerks and the members of the subordinate staff: such employees appear to be drawn from a class whose standard of living is something between that of a clerk and that of a peon. For *poddars*, money testers, collecting sarkars and *gollas*, therefore, we direct that their basic pay shall be the average of the basic pay of a clerk and that of a member of the subordinate staff for each year of service in each class of bank and area.

CHAPTER VI

Objections as to Scales of Pay

104. It has been contended that nothing substantial has been shown by the employees to establish or indicate that any need has arisen for a change in or improvement upon the awards made with regard to banks in different parts of the country, the most important of them having been made in 1947. Reliance has been placed by the banks on the following observations made by Mr. Justice Divatia in the Bombay Electric Supply and Tramways Company award:

> "Without going so far as to say that the employees are barred by *res judicata*, any demands which are made before me and are covered by any decision in the previous adjudications cannot be proceeded now unless the employees prove any change of circumstances after the previous decision. If there has been no change of circumstances, the mere ground that the previous adjudicator had not granted a demand would not, in my opinion, justify the employees in repeating the same demand before a new adjudicator because that would be substantially asking one adjudicator to sit in judgment over the decision of another adjudicator.[1]"

105. So far as the Divatia award is concerned, dissatisfaction among the employees about it has led to several banks' employees having got it terminated under the Bombay Industrial Relations Act, The dissatisfaction that arose after the publication of Mr. B. B. Singh's award led to the appointment of a Conciliation Board which had to raise numerous issues, a large number of which still remain undecided. Secondly, both these awards were made before the publication of the Central Pay Commission's Report. The said Report no doubt relates to Government servants of the Central Government, but it went so thoroughly into the conditions of service of the employees concerned and has arrived at such important conclusions that it has become a book of reference to all adjudicators who have to deal with employees with similar or comparable conditions of service. It may well be that if this Report had been available at a date prior to the awards referred to above those awards would have been different in substantial particulars. Another important Government Report which is available to this Tribunal but which was not available to the previous adjudicators is Mr. Subramanian's Report on the middle class employees of the Central Government. Thus there are matters on which the previous adjudicators have had largely to speculate but on which more concrete data are now available. Thirdly, there are several discrepancies between the pay-scales, rates of dearness allowance, etc., as laid down by the different awards, and one of the objects with which the present Tribunal was constituted was that as much uniformity as possible should be attained in such matters. Fourthly, it is to be remembered that demands to some extent are conditioned and limited by the existing circumstances, *e.g.*, the existing scales of pay, and what is likely to appear reasonable in such circumstances: there is a limit beyond which demands, by appearing unreasonable or exaggerated in the context of the existing situation, would often defeat themselves. It is particularly to be borne in mind that of late workers have become increasingly conscious of their right and in this they have been influenced as much by political developments as by economic conditions, *e.g.*, labour disputes, awards and inquiries such as those of the Central Pay Commission. At page 27 of their Report the Commission have remarked:

> 'We must also recognise that wage conditions reflect in a large measure the political development at which a community has arrived. It

1. *Bombay Labour Gazette*, December 1947, page 482.

is common knowledge that people in India (as elsewhere) have of late been influenced by the trend towards socialism. Experience of war service and high wages paid during the war have created a ferment and a changed outlook. Classes who were hitherto content to accept their lot now show an intolerance of unsatisfactory conditions of work and an increased desire to improve their standard of living. The suffering of the humbler classes of public servants during the war years have created in their mind a bitterness which belated and grudging measures of relief have not by any means helped to assuage. The growth of Trade Unionism in the services is in great measure due to the feeling that they were being ill-paid and exploited. The appointment of this Commission and the prospect of impending political changes have led the Services to form vague expectations of a new order. It is against this background that their claims for enhanced remuneration, for better treatment and for improved conditions of service have to be viewed."

106. It is true that the demand of the employees as presented before the adjudicators of the previous awards were generally substantially lower than those that are being made now. Before Mr. B. B. Singh and Divatia J., the lowest demand for a clerk's pay was Rs. 75 per month, and before Mr. R. Gupta, at Calcutta it was Rs. 70 per month. The present demands for the clerical staff mostly start with Rs. 100 per month. But it is to be noted, in the first place, that not only was a pay-scale demanded, but other allowances as well, such as a housing allowance at Bombay. Shortly after the reference of the Calcutta dispute to Mr. R. Gupta the employees of the Imperial Bank of India in the Bengal Circle made demands for a housing allowance and seven other kinds of allowances, besides revision of the dearness allowance., Before Mr. B. B. Singh also, demand for house allowance, scheme of provident fund, old age pension, gratuity, etc., were made. In any case, the demands now made purport to be based on the proposition that actual needs must be met. Such a demand cannot be ruled out solely on the ground that lower demands were made sometime earlier, without looking into their merits. The different considerations set forth above sufficiently negative the argument, in our opinion, that we are being invited to sit in judgment over the previous awards. It will be seen that there is no principle of *res judicata* involved. Change of circumstnces create new demands and the claims have to be considered on the basis of materials or data available from time to time. One of the important factors to be taken into account in the adjustment of industrial relations between capital and labour is the time spirit. The increasing consolidation and organizational capacity of labour, the incrasing realization of its strength and importance, the increasingly evident human aspect of its demands are matters which often invest old demands with a new complexion, a new context.

107. It is also true that certain unions and associations have even now made demands below those made by other employees. For instance, the Bank of Behar Employees' Association, Patna, has asked for Rs. 70 per month and the Bharat Bank Employees' Union, Delhi, has asked for Rs. 80 as the starting pay for the clerical staff. The large majority of employees' unions and associations, however, have asked for Rs. 100 as the starting pay. In view of this it would not appear unlikely that the unions and associations which have made more modest demands, if only those demands were granted, would increase their demands in the near future. In any case it would not be proper to drag the demands of the majority down to the level of the lowest demands made. The need for establishing uniformity, so far as it can be attained, must be the overriding consideration.

CHAPTER VII

Increments and Efficiency Bars

108. One part of item 1 in Schedule II is, "whether the remuneration of employees and their periodical increments should be correlated to their efficiency and attendance." This raises two questions: (1) whether the earning increments should be automatic or contingent on minimum of efficiency and (2) whether, besides, there should be efficiency bars in the scales of pay. The employees have contended that all increments should accrue automatically and that there should be no efficiency bars. As to the first contention they base it on the ground that the increments fundamentally constitute a recognition of the growing needs of a workman's family and the stoppage of an increment may drive him and his family below the subsistence level. As a matter of fact the prevailing practice seems to be to allow the increments annually more or less as a matter of course, an employee's efficiency being scrutinized specially when he has to cross an efficiency bar.

109. We do not think that increments merely constitute a recognition of the growing needs of a workman's family. They are also based on the growing experience and consequent efficiency of the workman, and the question of efficiency, therefore, cannot altogether be divorced from increments. As Mr. Justice Divatia has observed in the Bombay Banks award, "The employer has a right to expect a fairly good level of efficiency for the increments which are to be given in the grade itself." The management must have the power to demand a certain minimum of efficiency and, if that minimum be not attained, to withhold the next increment.

110. As to efficiency bars, the employees are against them on the grounds (1) that they place too much power in the hands of the management which is liable to be abused and (2) that they are generally placed haphazardly at different stages of the time scales without any reference to such stages as would require a careful estimate of a workman's ability to tackle a different kind of work or to be equal to the demands of a new grade of office. It has been contended that if a workman has been successfully working in a certain capacity for a number of years, it would be absurd for the management one day to examine his efficiency if he is thereafter to continue doing exactly the same kind of work. The necessity for such examination would arise only if his work was unsatisfactory; and if his work was not till then considered but found on examination to be unsatisfactory, that would primarily indicate defective supervision. As a matter of fact, however, nearly all the awards brought to our notice, including bank awards, place certain efficiency bars in the pay scales laid down. Mr. Gupta in the Imperial Bank of India award in West Bengal observed, "The efficiency bars as well as the prospect of promotions in the senior grade will provide the necessary incentive to efficient performance of duties." Mr. Justice Divatia remarked in the Bombay Banks Award: "If there is no such bar a clerk who is found to be inefficient after his confirmation will have no incentive for improvement throughout his whole service and the employer may have no alternative except to discharge or dismiss him." Before the Central Pay Commission also the Services expressed their dislike of efficiency bars and they pointed out that the power of the head of the office to stop increments in case of inefficiency was just as effective in its operation as an efficiency bar. The Commission said, "We cannot accept this view. Stoppage of increments is regarded, and rightly regarded, as in the nature of a condemnation and attitude of the head of the office in resorting to that course must be different from his attitude in applying the efficiency bar. The principle of the efficiency bar is that on reaching a certain

point in the salary scale an officer shall be certified as competent to carry out the higher duties of the grade before further salary advances are granted.[1]" In this view a distinction is to be observed between the test implied in stoppage of an increment and that implied in applying an efficiency bar. In practice, however, usually when the time for testing with reference to an efficiency bar comes, there is no question of "higher duties" for which the employees in question is to be tested. In the Divatia award four grades (A, B, C and D) are shown on the same pay scale, there being three efficiency bars between the grades. It is, however, difficult to see how the different grades could stand for different kinds of work or duty, seeing that each comprises certain specified years of service, *e.g.*, the last 3 years constitute grade 'A' and the 19th to the 22nd year grade 'B'.

111. There is no doubt some force in this criticism. But the question that arises is, apart from the occasions when an employee's increment can be stopped as a condemnation or punishment, is it not necessary to have periodical check-ups of an employee's efficiency, even if he is not going to be given higher or more onerous duties at the next stage? We think that such tests or check-ups should not altogether be abandoned, though we are aware that in the United Kingdom no efficiency bars exist in the banks' services; Mr. Blair on behalf of the Allahabad Bank, the Eastern Bank and the Mercantile Bank of India told us that in the United Kingdom a report was made each year regarding each employee on which his increment depended. In a recent award made by the Court of Arbitration in New Zealand about the Bank of New Zealand and certain privately owned banks, a time scale of salaries has been laid down for the staff, but no efficiency bars have been inserted therein[2]. Mr. Justice Divatia put no efficiency bars in his award concerning Greaves Cotton and Crompton Parkinson, Ltd., and other allied concerns[3].

112. We have, however, to consider the circumstances generally prevailing in this country. Efficiency bars exist in the Government services and have been inserted in nearly all awards relating to scales of pay made by Industrial Courts and Tribunals. The relations between the employees and the employers are not, unfortunately, as good as might be desired. If efficiency bars be abolished the employers would, in our opinion, be likely to resort more frequently to stopping increments than if such bars be retained, and the employees would suffer from an ever-present feeling of constraint or apprehension that their increments may be stopped in any year. Such a result, in our opinion, would be less likely if efficiency bars, in some form, be retained. We think, however, that there should not be more than one efficiency bar in an employee's whole career. We find that in most of the scales of pay applicable to Government servants that have been brought to our notice not more than one efficiency bar has been inserted. In our opinion it should be introduced fairly late in an employee's career; and we direct that it should be placed between the seventeenth and the eighteenth year of service in the case of all employees.

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1. Report of the Central Pay Commission (1947), pp. 39-40.
2. "The Bank Officer", June 1949, page 3.
3. 1948 I.C.R. (Bom.) p. 223.

CHAPTER VIII

Adjustment to the new Pay Scales

113. We next proceed to item 2 of Schedule II; "Rules for fitting the existing staff into the revised scales of pay." All the employees have asked for a 'point to point' adjustment, *i.e.*, the placing of each employee at that stage in the new scale to which he would have arisen by reason of the length of his service if he had entered service on the new scale. All banks have opposed such adjustment. Mr. Justice Divatia dealt with the difficulties presented by the question of adjustment in paragraph 23 of his award. One objection made by certain banks before him was that the effect of a point to point adjustment "would be practically to make the operation of the award retrospective from a period of more than twenty years before the present dispute." Mr. Justice Divatia observed, "I think there is some force in this contention. At the same time it must be remembered that no adjustment can be completely satisfactory to the whole of the staff. If the pay of all clerks who are senior in service is to be increased as if they were governed by the new grades from their start, irrespective of their efficiency, it would give grounds for complaint that they got the highest of the new grade without fulfilling the condition of crossing efficiency bars at different stages and that they would now get more salary than those who, though junior in service, are getting more on account of their efficiency. On the other hand, if adjustment is to be made only on the basis of the present salaries, the seniors will have a grievance that they do not get any benefit of the new grades. Some dissatisfaction is, therefore, bound to be caused by any basis of adjustment." On account of those difficulties it was agreed at his suggestion that each big bank might make such adjustment as was best suited to its own circumstances, leaving it to the employees, if such adjustment was found generally unsatisfactory, to apply to the Court for its modification. No such direction, however, was given in respect of the small banks covered by his award. Mr. B. B. Singh gave no direction regarding adjustment; nor was adjustment the subject matter of any of the 106 issues framed by the Conciliation Board appointed for the clarification and interpretation of Mr. Singh's award. Neither Mr. R. Gupta in his award regarding the Imperial Bank of India nor Mr. S. K. Sen in his awards regarding the Central Bank of India has allowed point to point adjustment. The Imperial Bank of India appears to have made a point to point adjustment in applying the awards in the case at least of a large number of its employees. The Central Pay Commission examined the question of "fitting existing employees into the proposed scales" in paragraphs 68 to 70 of their Report. The Commission observed, "We have been asked to assume that the new scale had been in force from the commencement of the service of each individual. We are unable to accede to this claim and we see no justification for it. It seems to us right to presume that, except in the lowest grades, the revised scales of 1933 were not inadequate with reference to the then prevailing price level or cost of living. Unless this assumption can be displaced, the claim made by the Services cannot be sustained." The Commission recommended that an employee's initial pay in the new scale should be fixed first by taking the stage next above the pay being drawn and then by adding special increments at the rate of one increment in the new scale for every three completed years of service. This rule was to be subject to certain ceilings mentioned in the Report. With certain variations this rule has been followed by the Industrial Tribunals at Bombay in a number of their awards.

114. Besides the argument used by the Central Pay Commission against the point to point method of adjustment, some of the other arguments urged against it were as follows:

(1) Adjustments have already been made under the existing awards, in no case there having been a point to point adjustment. To introduce such adjustment now would have a very disturbing and upsetting effect.

(2) Cases of special promotion and cases of retarded promotion would be unfairly affected, and seniorities would be disturbed.

(3) Many employees would jump over efficiency bars they have not crossed.

(4) If point to point adjustment be given, the result would be to raise the pay of a large number of employees suddenly by disproportionately large amounts, subjecting the resources of the banks, besides, to a severe and perhaps unbearable strain.

115. On the other hand, the following contentions have been advanced on behalf of the employees:

(1) If the point to point method is not adopted one would not get one's legitimate place on the new scale.

(2) Hardly any of the present employees, except under such adjustment, can hope to reach the maximum pay in his 25th year of service, and many would never reach it.

(3) If the present scale is higher than the existing one, it shows that up till now the employees have been inadequately paid, and a point to point adjustment would give them some compensation for this.

(4) The new scales are intended for the present employees (who have raised the present dispute) rather than for future recruits, and it is against reason and commonsense to put a man in the 12th year of his service, for instance, in the new scale as if he was in his 8th year merely because he has been getting less in the past than what the Tribunal has found to be reasonable. Such a procedure could be aptly described as giving with one hand and taking away with the other what is legitimately one's due.

116. In the passage from the Central Pay Commission's Report quoted above they said that it seemed to them right to assume that, except in the lowest grades, the revised scales of 1933 had not been inadequate with reference to the then prevailing price level or cost of living. Similarly several banks have referred to the fact that after the previous awards they have made adjustments to fit their staff to scales of pay laid down therein and have contended that such adjustments were adequate in the circumstances then existing. But those adjustments were made fairly recently and they have generally been characterised (apart from the question of the adequacy of the awards on other points) by the employees as unsatisfactory where no point to point adjustment was made. Besides, the pay scales prescribed by us and those laid down in the previous awards all refer to base years within a year or so of each other and are thus comparable; and as there is no sufficient material to show that the scales prevailing prior to the awards were adequate, it can be fairly contended, in our opinion, that as new pay

scales are being laid down now the question how they are to be applied with reference to the years of an employee's service can and should be examined afresh, without reference to the manner how the corresponding problem was dealt with under the past awards. We do not think that, as under the Bombay award, it would be proper to leave such an important question as adjustment to the new scales of pay to the discretion of the banks. It is a matter which vitally affects the employees, and the persistence with which they have urged point to point adjustment in different adjudications, although they have practically never got it in any award, would *prima facie* suggest a failure on the part of the tribunals to solve the problem in a completely satisfactory manner. In fact, it is difficult to answer the question, if you are going to lay down a scale of pay and then apply it in such a manner that most of the workmen concerned may not get the full benefit of it, what is the point of devising the scale at all? It is the present workmen who have come before the Tribunal with their dispute (and not the future entrants) and who are, therefore, primarily entitled to the benefit of any scales of pay that may be laid down. It is to be remembered that they are laid down with reference to the years of an employee's service, being based mainly on consideration of the needs of an employee according to different years of service, corresponding roughly to different years of his life. As a matter of fact, in the United Kingdom banks provide scales of pay according to the age of their clerical staff, and this practice also obtains in the awards of the National Arbitration Tribunal (see, for instance, its award No. 1296, dated the 21st July 1949, regarding salary scales of the clerical staff employed by the Teachers Provident Society, London). It seems that in this country considerations of the large increases in pay involved in applying the prescribed scales according to the years of service, as well as of the employees' capacity to pay, have generally resulted in the adoption of the kind of schemes that the Central Pay Commission recommended. We shall take a few typical Bombay awards. In an award made in 1947 regarding the Bombay Municipality and their employees[1] Mr. Justice Divatia observed: "It is true that the method of point to point adjustment is more favourable from the employees' stand point but that system ignores the element of efficiency of a clerk and a less efficient clerk is put at a higher grade than a more efficient clerk merely because of his years' service. The argument which is principally urged in favour of the point to point system is that a senior clerk must get a living or a saving wage at the time when adjustment is to be made and if he did not get an adequate amount of pay in the first years of service, there should be no reason why he should not get a wage which would be sufficient for maintaining his increasing family and also for saving some part of his pay after he became sufficiently senior in service. But the question of the total burden which would fall on the employers on account of this point to point method is also an element to be considered." The learned Adjudicator confirmed the method adopted by the Corporation, namely, "For less than one year's service—no increment; for service for one complete year—1 increment in the corresponding revised grade; for service of more than 1, up to 4 years—2 increments in the corresponding revised grade; for service of more than 4 years—3 increments in the corresponding revised grade", except in certain special cases. This method of adjustment was adopted by the same learned Adjudicator in his award regarding Greaves Cotton and Crompton Parkinson, Limited, and their employees[2] and later by Mr. M. C. Shah in his awards regarding the Oriental Metal Pressing Works and their employees[3] and the Premier Construction Company, Limited, and others and their workmen.[4]

1. Bombay Government Gazette Extraordinary, 27th November 1947, P. 4495.
2. 1948 I. C. R. (Bom.) 233.
3. 1949 I. C. R. (Bom.) 269.
4. 1949 I. C. R. (Bom.) 703.

117. In our opinion the two main arguments as regards the application of the point to point method are: (1) under the award itself an employee is held entitled to the pay appropriate to the years of his service and (2) an employee should not get too big a jump in his pay, particularly if it places the employer suddenly under too great a burden or even a heavy burden. The first is an argument based on a right while the second is based on expediency or practicability. As it seems to us possible that a point to point adjustment may suddenly prove too onerous to a number of banks we have decided to adopt a compromise between the two methods advocated by the parties, for we do not think that it would be right to deny the employees' claim altogether; theoretically that claim is superior to the contentions urged against the point to point method. We, accordingly, give the following directions regarding adjustment:

(1) When an employee already in service is brought on to a scale of pay laid down by us, his pay shall be fixed by—

(*a*) putting him at a stage in the new scale of pay where the total of the pay, the dearness allowance and other allowances, if any, drawn by him under the existing scales at least equals the total of the pay and the dearness and other allowances that would be drawn under the scales now prescribed, and thereafter,

(*b*) in case the stage to which a point to point adjustment would have entitled him has not been reached, adding increments in the new scale of pay at the rate of one increment for every three completed years of service, provided that by this process the stage to which a point to point adjustment would have entitled him is not exceeded or overstepped.

(2) The application of the above process may still leave a gap, consisting of one or more increments between the stage in the new scales of pay thus attained by him and the stage to which a point to point adjustment would have entitled him. We direct that in such a case he shall be enabled to cover this gap, within a maximum period of four years, by getting, after the first year under the new scale, extra increments (*i.e.*, in addition to the increments he will normally get), according to the following scale:

Number of extra increments in the new scale to be made up	Number of year in which this process is to be completed	Procedure
1 ..	1 ..	
2 or 3 ..	2 ..	1 or 2 increments per year, two increments being given in the second year where necessary.
4 to 6 ..	3 ..	1 or 2 increments per year, two increments being given in the later years except where they are necessary throughout.
More than 6	4 ..	1, 2 or more increments per year, the larger number of increments being given in the later years.

Illustration:—An employee is on the following scale:

Rs. 40—3—61—4—93—5—113—7—120. He is in the fifth year of his service and is getting a pay of Rs. 52 and a dearness allowance of Rs. 20, *i.e.*, Rs. 72 in all. Suppose that the new scale which is applicable to him is Rs. 64—4—98—5—123—131—6—167—174—182—191, the dearness allowance

being 25 per cent of the pay. The adjustment will be as follows: Under direction (1) (*a*) he is put at the bottom of the new scale, where he gets Rs. 64 *plus* Rs. 16 or Rs. 80 in all. Under directions (1) (*b*) one increment will be added, bringing up his pay to Rs. 68. Under a point to point adjustment he would be entitled to a pay of Rs. 80 in the new scale. He has, therefore, to make up a "gap" of three increments. Those, under direction (2), will have to be made up in two years. Therefore, in the next year he will earn one ordinary and two special increments, *i.e.*, Rs. 8 in all, and in the year after he will earn one ordinary and two special increments, *i.e.*, Rs. 12 in all.

(3) The above directions shall be subject to the following provisions:

(*a*) The employers' ordinary right of stopping an increment, as a measure of disciplinary action under this award, will not be affected, though it may result in an employee's not "covering the gap" within the appropriate period mentioned above.

(*b*) As far as possible the existing seniorities among the employees should not be disturbed. An employee who has got special promotion may thus be ultimately placed at a point on the new scale correspondingly higher than the number of the years of his service would warrant. Similarly, an employee who has not been able to earn (otherwise than by way of previous adjustment) the usual increments will have to be placed on the new scale at a point correspondingly lower than what he would otherwise have attained.

(*c*) In any case where, at any stage, under the existing scale of pay an employee's pay is more than the pay that would be due under this award, such pay under the existing scale should be retained and the total of the other emoluments due under this award should be reduced accordingly, provided that where the total of the other emoluments under the existing scales of allowances exceeds such reduced total of their emoluments under this award, the existing other emoluments should continue to be paid in lieu of the dearness and other allowances, if any, payable under this award.

(*d*) In any other case where, at any stage the existing scales of pay, dearness allowance and other allowances the total emoluments exceed the total emoluments due under this award, if the pay be less than under this award it should be brought up to its level and the balance of such existing emoluments should continue to be paid in lieu of the dearness and other allowances, if any, payable under this award.

(*e*) In the adjustment to be made immediately on the introduction of the pay scales, etc., laid down by us efficiency bars in the existing scales of pay, if any, should be disregarded.

(*f*) In these directions the expression "other allowances" and "emoluments" should be understood to mean allowances and emoluments exclusive of hill, fuel, halting and washing allowances, if any.

118. As to the expression "emoluments" used anywhere in this award, it is our intention that no amount which is contributed by a bank towards a provident fund, pension or guarantee fund or similar other fund for the benefit of the employees should be deemed for the purposes of this award, to be a part of an employee's emoluments.

CHAPTER IX.

DEARNESS ALLOWANCE

119. The next matter that arises for our consideration is the subject of dearness allowance (item 3 in Schedule II). The existing awards with regard to banks provide for fixed percentages of the basic salary or wage as dearness allowance. That this is an unsatisfactory method has been shown by the fact that the percentages fixed in the Divatia award were soon found inadequate and not only did several banks voluntarily raise those percentages but several adjudicators in West Bengal, who were prepared to follow the general scheme of the said award, were compelled to raise them. In our opinion it would be best to relate the dearness allowance of any place to the cost of living index figures of such place or the place nearest to it for which the Central Government publish such figures, with the proviso that in the unlikely contingency of any place happening to be equidistant from more than one place for which such figures are published, its index figures should be taken as the average of the index figures for the latter places. The existing series of the cost of living index figures for Bombay City, Ahmedabad, Sholapur, Jalgaon, Kanpur, Nagpur and Madras will have to be reduced to the base of 1944 by the process already described.

120. We do not think that even at the lowest level the increase in the cost of living since 1944 can be allowed to be fully neutralised. While recognizing that at that level we have taken into consideration more or less the fundamental needs of an employee, it is also necessary to remember that all salaried persons, especially of the middle classes are called upon to make sacrifices in the present times in view of the existing low level of the national standard of income and that even the poorest representatives of such classes must not shirk the duty of shouldering of a part of the burden which has fallen on the entire nation. It should also be borne in mind that in Mr. Subramanian's estimates regarding expenditure, except for unusual items like expenses due to marriages and serious illness practically all possible items of expenses have been taken into account, including several items which do not find place in the budgets of the working classes, *e.g.*, newspapers, club subscription, religious ceremonies, gardening, children's education, sweeper, washerman and toilet requisites. Some of these items should be non-existent when an employee enters service; still they have entered into the calculations for ascertaining the requirements of an employee even when he enters service. We consider that the following scale of dearness allowances would be appropriate and direct that it shall apply:

Amount of monthly pay[1]	On every rise of 10 points in the cost of living index figure above the level of 1944[2] (calculate to the nearest eight annas and the indices being converted to the base 1944 = 100)
Up to Rs. 50	9 3/8 per cent.
Thereafter up to Rs. 100	8 1/3 per cent.
Thereafter up to Rs. 150	7 1/2 per cent.
Thereafter up to Rs. 200	6 1/4 per cent.
Thereafter	5 per cent.

1. As defined in Chapter XII.

2. On the basis of the index figures published in the *Indian Labour Gazette* and (in the case of Calcutta) in the Monthly Abstract of Statistics published by the Government of India.

An illustration of how this scale is to be applied may be given. Suppose that we have to ascertain the dearness allowance for a workman in the Bombay City earning Rs. 150 per month when the working class cost of living stands at the index figure 300. The index figure for 1944 was 226 and if the two index figures be converted to the base 1944 = 100 we get the index figures 100 and 132 respectively. That means that there have been three rises of 10 points in the cost of living index figure above the level of 1944. The dearness allowance will, therefore, be—

On the first Rs. 50	...	Rs. 50 × 9 3/8 divided by 100 × 3 or Rs. 14.
plus on the next Rs. 50	...	Rs. 50 × 8 1/3 divided by 100 × 3 or Rs. 12-8-0.
plus on the next Rs. 50	...	Rs. 50 × 7½ divided by 100 × 3 or Rs. 11 *i.e.*, Rs. 37-8-0 in all.

121. The first part of item 3 in Schedule II is, "Dearness allowance to staff as well as pensioners." There are only a few banks, *viz.*, the Imperial Bank of India and some exchange banks, which give pensions to its employees on their retirement and the subject of pension is to be dealt with under item 9 to Schedule II. The Central Pay Commission have said, in paragraph 75 of their Report: "Consistently with our policy of helping those whose need is the greatest, we recommend that dearness allowance be limited to those drawing a pension of Rs. 150 per mensem or below and that the allowance be calculated at half the rate admissible as per slabs shown in the above table (in paragraph 72), treating pension as pay for the purpose." We adopt this suggestion except that instead of directing the calculation of dearness allowance at half the rate admissible for the scales of pay we direct that the following rates shall apply, treating all pensions as if they related to the base year 1944:

Amount of monthly pension	On every rise of 10 points in the cost of living index figure above the level of 1944 (calculated to the nearest eight annas and the indices being converted to the base 1944 = 100).
Up to Rs. 100	6 1/4 per cent.
Thereafter up to Rs. 150	5 per cent.

122. The next part of item 3 in Schedule II, "Can a portion of the dearness allowance be transferred to, and absorbed in, the basic wage" has already been dealt with by us in Chapter IV. The last part of item 3 is, "In particular can this be done in the case of banks in the United Provinces in respect of the allowance payable at the commencement of Mr. B. B. Singh's award". Our answer is that is not necessary to do anything to disturb the implementation of that award, which now stands modified by our interim award, with respect to the period prior to the date on which this award comes into operation.

497

CHAPTER X.

EMPLOYEES TO WHOM AWARD IS APPLICABLE

SECTION I

EMPLOYEES CONCERNED

123. We next take up item 37 in Schedule II, "Categories of employees to whom the award of the Tribunal is applicable." It is not disputed that it would be applicable to all workmen as defined in clause (s) of section 2 of the Industrial Disputes Act which is as follows :—

> "Workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air services of the Crown."

The advocates and representatives of the employees, however, relying on the definition of "industrial dispute" in clause (k) of section 2 of the Act, have contended that the award should also apply to any person in connexion with whose terms of employment or conditions of labour a dispute has been raised by workmen (including workmen's unions), *e.g.*, the question of whose pay or scale of pay has been raised by them in their demands. That clause reads thus :

> "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

Demands for revised scales of pay have come mainly from :

1. Federation of Bank Employees, Bombay.
2. Imperial Bank of India Indian Staff Association, (Bombay Circle), Bombay.
3. Imperial Bank of India Indian Staff Association (Bombay Circle), Poona.
4. Imperial Bank of India Indian Staff Association (Bengal Circle), Calcutta.
5. Imperial Bank of India Indian Staff Union (Madras Circle), Madras.
6. The United Provinces Bank Employees' Union, Kanpur.
7. Allahabad Bank Indian Staff Association, Calcutta.
8. Allahabad Bank Employees' Union, Delhi.
9. Bank of Behar Employees' Association, H.O. Patna.
10. Bank of India Ltd., Staff Union, Ahmedabad.
11. Bharat Bank Employees' Union, Delhi.
12. Central Bank of India, Elected Representatives, Delhi.
13. Ahmedabad Bank Employees' Union, Ahmedabad.

124. Excluding the subordinate staff, the demands concern mainly the following categories of employees :—

1. Clerks, graduates, diploma holders (C.A.I.I.B. or C.A.I.B.), ledger keepers, record keepers, counter clerks,

2. Godown keepers, collecting sarkars, bill collectors, money testers, *gollas*, pass-book writers, hundi presenters,

3. Typists, telephone operators,

4. Cashiers, shroffs, poddars, tellers, munshis, sub-accountants, assistant accountants, assistant cashiers, assistant khazanchis,

5. Stenographers, comptists, comptometer operators,

6. Head clerks, head cashiers, accountants, khazanchis, superintendents, supervisors, departmental-in-charges, clerks-in-charge,

7. Assistant managers, sub-managers, assistants,

8. Agents and managers.

Objections from the banks to the contention of the employees mainly take the following forms :—

(*a*) Some employees (*e.g.*, those mentioned in classes 7 and 8 above as well as most of those mentioned in class 6) are officers, and the Tribunal has no jurisdiction regarding them.

(*b*) Some (*e.g.*, certain head cashiers and khazanchis) work in the banks under special contracts and the scales of pay, etc., applicable to them are outside the Tribunal's jurisdiction.

(*c*) Some (*e.g.*, those working under treasurers and head cashiers) are in fact not the bank's employees at all, having been brought in by the treasurers or head cashiers concerned and holding office during the latter's pleasure. They, too, are outside the Tribunal's jurisdiction.

125. (*a*) As to the argument based on certain employees being officers, our view has already been indicated in our award dated the 19th January 1950 regarding certain cases of alleged victimization, etc., in the States of Delhi, East Punjab and Bihar, *viz.*, a dispute between employers and workmen may relate to employment or non-employment or terms of employment or non-employment or conditions of labour of persons who are not workmen. Sen J's judgment in Calcutta High Court in *Birla Bros.* v. *Employees' Union, R.*, v. *National Arbitration Tribunal*[1] and the case of *the Western India Automobile Association* v. *the Industrial Tribunal, Bombay*[2] were relied on in support of this view. We would further point out that in the last mentioned case, with reference to the words "employment or non-employment" in the definition of "industrial dispute", the Federal Court observed : "The failure to employ or the refusal to employ are actions on the part of the employer which would be covered by the term 'employment or non-employment'." Such failure or refusal would give rise to an industrial dispute regarding a person who was not employed and therefore could not be a workman ; and the illustrations given at page 898 of the report include two instances of disputes concerning non-workmen. If the view urged by the banks be adopted, it would lead to the absurdity that a dismissed workman, on thus ceasing to be a workman, would have no redress. The view taken

1. (1947) All-England Law Reports, Vol. 2, p. 693.
2. 51 Bom. L.R. 894.

both in England (see *R* v. *National Arbitration Tribunal*, ex parte *Keable Press, Ltd.,*)[3] and in India is clearly against such a proposition. In the *Kandan Textiles Limited* v. *the Industrial Tribunal, Madras and others* decided on the 26th August 1949, the Madras High Court observed : " If——the dispute started with the dismissal (of a workman) it can be contended with great force that the dismissed workman cannot be held to be a workman within the meaning of the Act " (*per* Rajamannar C.J. ; and " If such a dismissal, however, even of an individual workman is taken up by a workers' union or a substantial body of workmen who continue in employment and espouse his cause on industrial dispute may arise " (*per* Mack J). Sir Jamshedji Kanga contended that there might be an industrial dispute relating to a " potential " workman, but not relating to one who was not and could not be a workman at all. We find it difficult to appreciate this argument, for apart from the difficulty involved in the concept of a potential workman, such a person is as completely outside the definition of " workman " in the Industrial Disputes Act as any other person, *e.g.*, an officer.

126. Sir Jamshedji Kanga next contended that if the connotation of " any person " was as wide as contended by the other side, a clerk might raise a dispute even regarding the salary of a High Court Judge, and that it would be absurd for the Tribunal to try such a dispute behind the back of the person concerned and possibly condemn him unheard. It does not appear to us that there is any need for such apprehension arising out of the view we have taken. In the first place, the " dispute or difference " must be a real dispute or difference, *i.e.*, one in which a party is really interested, in the ordinary sense of the term, that is to say, the subject matter should be one which effects his present position or future prospects not remotely but proximately and should not be based on his theoretical or ideological opposition to an existing position of affairs or a more feeling, *e.g.*, that a High Court Judge is getting far too much or that in an ideal world the differences between the incomes of its citizens should be less marked than they are today. Secondly, merely by raising a dispute a party is not entitled to bring it before the Tribunal ; it must be referred by the appropriate Government under section 10 to the Tribunal for adjudication, and it is unlikely that unreal and absurd disputes would be so referred. Thirdly, if a dispute concerning an employee who is not a workman is so referred, it is extremely improbable that the Tribunal would proceed to hear it in the absence of such employee. Under section 11 of the Act it would have the same power as a Civil Court in respect of enforcing his attendance, and the language of clause (b) of section 18 indicates that such a person can be summoned to appear in the proceedings as a party to the dispute. Thus such a person, though not originally one of " parties to the industrial dispute " [clause (a) of section 18], would be included in the expression used in clause (b) " all other *parties* summoned to appear *as parties to the dispute* ", so that although a Tribunal has not in terms been given the powers of a Civil Court under Order I, rule 10 of the Code of Civil Procedure, in effect a similar power has been vested therein. Only in such a character can such a person be bound by the award. It does not, therefore, appear to us that there is any force in the contention of Sir Jamshedji.

127. Sir Jamshedji Kanga next relied on the case of *National Association of Local Government Officers* v. *Bolton Corporation*[4] wherein at page 176 the following observation of Viscount Simon L.C. occurs : " First, as to the meaning of ' trade dispute ' in this connexion. Having regard to its definition for present

3. (1943) All-England Law Reports, Vol. 2, p. 633.

4. 1943 A.C. 156.

purposes, and to the wide definition of 'workman' which has to be read into it in order to ascertain its ambit, I think that the phrase can cover a dispute as to conditions of service of officers of a municipal corporation". The two definitions referred to were to be found in the Conditions of Employment and National Arbitration Order, 1940 and were identical with those contained in the Industrial Courts Act, 1919. They were as follows :

> "'Trade dispute' means any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person."
>
> "'Workman' means any person who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work, or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour."

It was held that the definition of "workman", which, on account of the expression "or otherwise" is obviously wider than the corresponding definition in the Indian Act, was wide enough to include officers. Sir Jamshedji has contended that if that were not so their Lordships would not have held that the definition of 'trade dispute' could cover a dispute as to the conditions of service of officers, for Viscount Simon used the words, "which (the definition of 'workman') has to be read into it (the definition of 'trade dispute') in order to ascertain its ambit." There, however, the dispute was first raised by the National Association of Local Government Officers, and being a party to the dispute they had to show that there was a valid trade dispute as defined in the Order; and this involved, showing that they were "workmen". This is all that appears to have been meant by Viscount Simon in speaking about the need for reading the definition of "Workman" into that of "trade dispute" and the ambit of the latter. There was no question in that case, and none was raised, regarding the meaning or connotation of the expression "of any person". We are, therefore, of opinion that this case does not help Sir Jamshedji.

128. The view that we are taking finds support also from some of the existing awards. In an award concerning an industrial dispute between the Central Bank of India, Ltd., and its employees in its Calcutta branches (published in the *Calcutta Gazette* under Order No. 1088 Lab., dated the 23rd December 1947 of the Government of West Bengal) the learned Adjudicator Mr. S. K. Sen observed : "It would appear, therefore, that there may be a legitimate industrial dispute under the Industrial Disputes Act concerning the terms of employment of an officer and a decision on such a point can also be given." In an award concerning an industrial dispute between certain joint steamer companies and their workmen (published in the *Calcutta Gazette* under Order No. 4748 Lab., dated the 17th September 1949) the learned Adjudicator Mr. A. Das Gupta, said, after referring to the expression "any person" in the definition of "industrial dispute",—

> "The word 'any person' is elastic enough to include an officer. An officer cannot himself raise an industrial dispute and demand his own reinstatement before an Industrial Tribunal. But the dispute relating to and concerning an officer may be taken up by a workman or for the matter of that by a Union of workmen, if it is a dispute of the workmen for it is then an industrial dispute. This

is permissible under the Law as it stands to-day and the Tribunal can assume jurisdiction of such a dispute when it is placed by the Union of workmen."

129. It is true that in the Bombay Banks award Divatia J. held that the only employees of the banks concerned who were affected by the dispute were such employees as did clerical work and the subordinate staff who did manual work; and he observed, "all other employees of the banks such as Superintendents and Junior or Senior Officers are excluded." This was because there was a fundamental difference in the scopes of the meaning and denotation of the expression "industrial dispute" in the Industrial Disputes Act, 1947 and the Bombay Industrial Disputes Act, 1938 under which the Bombay award was made. The latter Act has now been superseded by the Bombay Industrial Relations Act, 1946, but the definitions under those two Acts of the expression "industrial dispute" and "industrial matter" and those of the expression "employee", in the material parts, are identical or similar. In the Bombay Industrial Disputes Act, 1938 "industrial dispute" was thus defined :—

> "Industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter."

> "'Industrial matter' means any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or non-employment and includes—
>
> (a) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person;"

"Employee" was defined as "any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry." Thus it will be seen that only matters pertaining to the (a) dismissal or (b) non-employment of "any person", are specifically mentioned in the definition of industrial matter" with which an industrial dispute must be connected under the Bombay Act. Therefore, no industrial dispute regarding the pay-scale or dearness allowance or any other question relating to an officer could apparently be raised under that Act. The scope of the definition of "industrial dispute" in the Industrial Disputes Act is much wider and enables a Tribunal appointed thereunder to take cognizance of such a dispute raised by workman, or a union of workmen, and referred to it for adjudication. The published report of the Conciliation Board appointed by the United Provinces Government under the United Provinces Industrial Disputes Act, 1947, for clarification and revision of Mr. B. B. Singh's award shows that a large number of issues were raised by the said Board. One of which was, "Class of employees affected by the Award." The decision of the Board that it could deal only with those employees who did manual or clerical work was, in our opinion, incorrect owing to the failure of the Board to appreciate the difference between the definition of "industrial dispute" in the Act aforementioned, which was the same as that contained in the Central Government's Industrial Disputes Act, 1947, and the corresponding definition contained in the Bombay Industrial Disputes Act, 1938 under which Divatia J. made his award at Bombay. Even the parties concerned appear to have thus misled, for they agreed that the Board could deal only with "manual workers and clerks, as opposed to officers."

130. A tribunal, however, may not always adjudicate on each and every question raised by any worker or union, especially when the terms of its reference are as wide as in the present case. In *Conway* v. *Wade*[5] Lord Loreburn L.C. said, "If this section is to apply there must be a dispute, however, the subject matter of it be defined. A mere personal quarrel or a grumbling or an agitation will not suffice. It must be something fairly definite and of real substance"; and Lord Shaw said, speaking about dispute between workmen and workmen, "But I cannot see my way to hold that 'trade dispute' necessarily includes accordingly every case of personal difference between any one workman and one or more of his fellows. It is true that after a certain stage even such a dispute, although originally grounded, it may be, upon personal animosity, may come to be a subject in which sides are taken, and may develop into a situation of a general aspect containing the characteristics of a trade dispute; but until it reaches that stage I cannot hold that a trade dispute necessarily exists." In the Australian case *George Hudson Ltd.* v. *Australian Timber Workers' Union*[6] Isacs J. observed :

> "The very nature of an "industrial dispute" as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individuals then working from the specific individuals then employing them, and not for the moment only, but for the class of employees from the class of employers limited by the ambit of disturbance or dislocation of public services which has arisen or which might arise if the demand were not acceded to and observed *for* a *period* really indefinite x x x x It is a battle by the claimants, not for themselves alone
> and not as against the respondents alone, but by the claimants as far as they represent their class, against the respondents so far as they represent their class."

131. Such considerations are bound to arise where a Tribunal is called upon to adjudicate collectively on a large number of disputes arising or apprehended over a large area as in the present case. We do not therefore, propose to consider in this award matters which have not been raised by a sufficiently large number of workmen and which do not appear to affect them except remotely or indirectly. Such matters, for instance, would be questions of pay, etc., of managers and assistant managers. Questions relating to head clerks, supervisors or departmental in-charges were considered by Mr. B. B. Singh and are of more interest to workmen, for they may normally expect some day to be promoted to such offices. In this award on the dispute relating to the Central Bank of India, Ltd., (Calcutta branches), Mr. S. K. Sen, said, "Normally of course the workmen are not concerned with the terms of employment of the officers. The case of supervisors is, however, different, Supervisors are comparatively low paid officers and they have become members of the Employees' Association which is registered under the Trade Union Act." Mr. R. Gupta included head cashiers in his award.

132. We now proceed to deal with the argument (B) advanced on behalf of the banks, namely, that some employees (*e.g.*, head cashiers and Khazanchis), as they are employed on specific agreements and on special terms, are outside the jurisdiction of the Tribunal.

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5. (1909) A.C. 506.
6. 32 Commonwealth Law Reports, 411 at 441.

303

133. We have looked in nine agreements between certain banks and their head cashiers, treasurers, cashiers or shroffs, and find *inter alia the* following common features therein :

(1) the head cashier, etc., is appointed and his salary paid by the bank ;

(2) appointments to the staff under his control are made by him with the approval of the Agent or the Manager of the bank or by the bank on his recommendation ; he can recommend dismissal, but the power of dismissal or of directing dismissal of such staff vests in the bank ;

(3) he guarantees the bank against losses and expenses by reason of the acts, omissions and defaults of any members of the staff under his control and is responsible for the correctness and genuineness of all hundis, cheques, securities, vouchers, deeds, documents, writings and signatures which he accepts as correct or genuine, and he has to make good to the bank any loss or damage which may be sustained owing to forgeries, etc. ;

(4) he is responsible for the safe custody of bullion, cash securities, etc., deposited with on belonging to the bank ; and

(5) his services can be terminated by the bank for adequate reasons.

134. In certain banks, *e.g.*, the Punjab National Bank, Limited, and the U.P. Provincial Co-operative Bank, Limited, the treasurer is paid a lumpsum for running his department. In the Imperial Bank of India the khazanchi system prevails only at Kanpur and the same system of paying him a lumpsum obtains there. In the Allahabad Bank, Limited, the "treasurer's system" obtains but appointments in the cash department are made by the bank in consultation with the treasurer. Mr. Singh, on behalf of the Punjab National Bank, Limited, said that the bank had no control over the men working under the treasurer except as to the payment of their salaries which was made by the bank. But a letter dated the 24th December 1949 from the bank was produced in which it was stated that the promotion of the head cashier at Aligarh, who worked under a treasurer, had been stopped, he being an employee of the bank.

135. We do not think that the terms relied on by the banks in the agreements concerning the appointments of the persons under consideration have the effect of taking them out of the Tribunal's jurisdiction if they would otherwise come within such jurisdiction. As a matter of fact there is ordinarily an implied, if not an express, agreement between a bank and all its employees ; and there can be no doubt that an industrial tribunal can look into and adjudicate upon a dispute even though it should involve written contracts. At page 536 of "Labour Disputes and Collective Bargaining" by Ludwig Teller it has been observed, "Industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obligations or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements." That an industrial dispute might exist though the employers were legally entitled to do what they did is clearly recognized in the case of *National Association of Local Government Officers v. Bolton Corporation*[7]. The dispute in that case related to payments which the employers could legally make or legally refuse to make, and it was referred as a trade dispute by the Ministry of Labour, acting under the Conditions of Employment and National Arbitration

7. (1943) A.C. 166.

Order, 1940, to the National Arbitration Tribunal. It was held that it was a valid trade dispute properly referred to the said Tribunal. We are, therefore, unable to hold that such employees as are employed on specific agreements and terms are outside the jurisdiction of this Tribunal merely by reason of such agreements and terms. It has been pointed out that Mr. R. Gupta laid down a scale of pay for head cashiers in his award.

136. The last objection that has to be dealt with is (C) that some persons, *e.g.*, those who work under treasurers and head cashiers are not the banks, employees at all, having been brought in (or "intromitted", to use the language of some of the agreements) by the treasurers or head cashiers concerned and keeping office during the latter's pleasure. We have already noticed that the practice under the agreements is that appointments of the staff working under the control of the treasurer, head cashier, etc., are made either by him with the approval of the Agent or Manager of the bank or by the bank on his recommendation. Normally the persons so appointed are paid their salaries by the bank and the power of dismissal or of directing dismissal of such staff vests in the bank. There is no doubt that such persons have to work largely during the pleasure of the treasurer or head cashiers concerned, and we have seen certain instances in which a treasurer or head cashier has expressed his want of confidence is a certain employee working under him, with the result that the bank has felt obliged to terminate his services. The employees have complained that this is a device adopted by certain banks to get rid of inconvenient employees in the cash department, often rendering an industrial tribunal powerless in seeing through the device and affording relief to the employee concerned. We have not come across any case in which the service of an employee working in the cash department of a bank is so divorced from the bank's power of control, appointment, dismissal, etc., as to render him the servant of the treasurer or head cashier, etc., to the exclusion of the bank's service. In this connection the remarks of Mr. Justice Bind Basani Prasad, Chairman, U.P. Banks Conciliation Board in paragraph 17 at pages 14 and 15 of his Report published in the Award of the (U.P.) Conciliation Board (Banks), 1949, are relevant; he has taken the same view as we have taken here. We must, therefore, hold that the objection raised by the banks to this class of employees is not tenable and that we have full jurisdiction over the conditions of employment, etc., of such persons.

137. We are now in a position to answer the question raised in issue No. 37. It is unnecessary for our purpose to depart from the interpretation put upon the expression "workman" by Divatia J, for there is no substantial difference between its definition in the Bombay Acts and in the Industrial Disputes Act, 1947. He observed: "All that can be said is that the name (implying an officer's or a clerk's rank or grade) is immaterial. It is the character of the work which a person is doing that is material. If a person is doing work of a clerial nature but is called an officer and is given a lower salary than a clerk of his standing, he may choose to be put in the clerical grade if he thinks that injustice was done to him by taking him in the officers' grade. But if his work is that of an officer and not of a clerical nature, he may in the beginning get a lower salary than a senior clerk but with the prospect of getting in future a higher pay than the highest in the clerical grade." Some banks have been observed by us to have given certain employees powers of attorney, not because they have any need for the exercise of such powers but in order to bring them into the category of officers; and in certain cases employees have been temporarily promoted to an officer's rank with a similar object. Such subterfuges will now fail to yield the desired result in the view we are now taking. Whether such

a person is a workman or not will be a relevant consideration only in the context of the question, who is or are raising the industrial dispute? In our opinion such a dispute with employers can now be raised by workers regarding employees who may not be workmen provided it is found to be a proper or valid dispute in which workmen may be regarded as being genuinely interested.

SECTION II

Head Cashiers, etc., and Departmental In-charges

138. We think that it would be appropriate to deal here with the following question: "Whether head cashiers or treasurers' representatives or any employees who perform their functions are to be treated as Departmental In-charges" (item 23 in Schedule II). In the issues raised before Mr. B. B. Singh the categories "head clerks, supervisors and departmental in-charges" were put together in one class (issue No. 2), and Mr. Singh prescribed a special pay scale for them for each class of banks. Thereafter when the U.P. Conciliation Board was appointed one of the issues raised before them (No. 26) was, "whether the Head Cashiers or Treasurer's representatives or any employee in the banks who perform the function of Head Cashiers are to be treated as Departmental in-charges of the Cash Department in the banks?" This appears to have been the genesis of item 23 in Schedule II.

139. We feel that this question now ceases to be of much moment in the light of our findings, particularly as we propose to make provision in the next Chapter for the minimum special allowances (for certain categories of employees, *e.g.*, head clerks, supervisors and departmental in-charges. We have no doubt that each of them has his special importance; and it is obvious that even where the "treasurer's system" exists a head cashier, who keeps a key of the treasury, signs important reports and is given a power of attorney and responsible work, is a very important employee. The treasurer is usually a businessman who guarantees the honesty of the head cashier and in some places does no work in the bank; and the head cashier not only looks after the department and has custody of the valuables pledged with the bank but has also to make good any losses occurring in his department. But as we have already pointed out the issue is no longer important and it is not necessary for us to give an answer to or a finding on the question.

140. We have had, and shall have, occasion, in certain Chapters of this award, to give directions regarding "employees" or employees not belonging to the subordinate staff or establishment. In view of the considerations dealt with in this Chapter and the next, we direct that the expression shall include the categories if employees for whom we have provided special allowances in Chapter XI, but that subject to this such directions shall not be deemed to apply to managing directors, managers, agents, superintendents, accountants, head cashiers, treasurers and khazanchis and such other officers as may be drawing basic salaries of not less than Rs. 500 per month [8].

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8. This Chapter is subject to the Minute of Dissent by Mr. N. Chandrasekhara Aiyar printed at the end of the award.

506

CHAPTER XI

Special Allowances

141. We have laid down the scales of basic pay for the clerical and the subordinate staffs. There have been, in addition, demands from the employees for special scales of pay or for special allowances for specific classes of employees, mainly on the grounds of special qualifications, skill or responsibility attaching to or required in the offices or jobs in question. The extra payment to be made for "trained, skill or other exceptional qualities necessary for an employee exercising the required functions" has been called the "secondary wage" by Mr. Justice Higgins in his "A New Province for Law and Order" (1922). The number of specific classes of offices or jobs for which special allowances or scales are demanded by the different unions is very large, and it is not usual to give special allowances or attach special pay-scales to all such officers or jobs. In respect of such of them as are specially treated in the matter of pay, again there is a great diversity in practice from bank to bank, and it does not appear possible, or necessary, to bring them under one rule, regardless of a bank's past practice or present capacity. Mr. B. B. Singh put cashiers and money-testers in the same scales as clerks and prescribed special scales for Headclerks, supervisors and departmental in-charges; and Mr. R. Gupta gave a special allowance to stenographers and specifically put head cashiers in the senior clerical grade (Rs. 100—8—180—E.B.—10—250). Mr. S. K. Sen in his award about the Central Bank of India and its branches in Calcutta has laid down the following scale of pay for supervisors: Rs. 85—15—145—E. B.—20—225—E. B.—25—300 Mr. Justice Divatia, in referring to the class of employees for which higher scales were demanded said, "The reason for asking for a higher start for these clerks is said to be that they are entrusted with work involving immediate personal responsibilities and that a clerk like a stenographer cannot be available even on a pay of Rs. 75 per month. It is true that at the present time one cannot get a good stenographer on Rs. 75 per month but I do not think that it is a sufficient reason for laying down an increased minimum for a stenographer. All that is necessary is to fix the minimum and the maximum and if any type of clerk is not available for the minimum fixed he may be employed on any intermediate pay in the grade according to his qualifications. As regards the other types of clerks for whom a higher start is demanded, work which is expected of them can be entrusted to clerks of some years' standing after they have gained sufficient entrusted to clerks of some years' standing after they have gained sufficient experience and merit. I do not, therefore, see any necessity to grant more salary from the beginning to clerks doing more responsible type of work".

142. It seems to us that two things can be said about the line of reasoning adopted above. In the first place, when an employee begins working in a special capacity (*e.g.*, as a head clerk) or enters service with special qualifications (*e.g.*, as the holder of a Banking diploma) he ought to know definitely the minimum salary to which he is entitled, just as an ordinary clerk is entitled. Secondly, if he is put on the ordinary pay scale somewhere above the stage where the years of his service would ordinarily have entitled him to be, he may come after a few years to the end of the scale, and if he gets no further promotion he would have to remain stationary for a large number of years on the same salary before he retires. Mr. Gupta prescribed two scales for clerks, namely, Rs. 70—4—126—E.B.—130—5—175 and Rs. 100—8—180—E.B.—10—250. Suppose that a clerk becomes a head clerk in the twelfth year of his service.. If there

1. Page 42.

be one scale of pay only, *e.g.*, the junior scale given above, he may be given a starting pay of Rs. 140 as head clerk; but he would reach the maximum of Rs. 175 in seven more years, *i.e.*, in the nineteenth year of his service. If, however, he be put on the senior scale of pay given above, he would not only reach a higher maximum pay, but go on earning increments for a longer term of years.

143. We have come to the conclusion that we cannot deal exhaustively with all classes or categories of jobs which ought to be specially remunerated. We think, however, that we should deal with certain categories of employees, regarding as of little moment the question whether any of the said employees are clerks or officers. We would omit from our consideration such undoubted and high officers as managers, superintendents, accountants, head cashiers and agents, and also leave out (*a*) categories which do not appear to deserve any special allowance or special pay scale and (*b*) categories regarding whom the question of giving them such allowances or scales has not been adequately or satisfactorily argued before us. We are omitting from our consideration the cases of managers and agents (regarding whose pay, or rather the limits of whose pay, demands have been made by some unions) not because they are officers, but because the demands made in respect of them do not appear to concern the employees whose representatives have appeared before us so intimately or proximately as to merit our attention or consideration. Another thing which we should want to make perfectly clear is that if we deal certain specific categories of employees in this part of our award that should not imply or lead to the inference that no other categories deserve to be, or should be, allowed special allowances or put or kept on special scales of pay.

144. We think that the following categories of employees deserve consideration:—

graduates,
holders of banking diplomas like C.A.I.I.B. and C.A.I.B.,
comptists,
stenographers,
cashiers,
supervisors,
sub-accountants,
clerks-in-charge,
departmental in-charges,
head clerks.

In our opinion it would be best if a minimum special allowance be fixed for each of the above categories in respect of the following four kinds of situations:

(A) Class A banks in class I areas,

(B) Class A banks in Class II areas and class B banks in class I areas,

(C) Class A banks in class III areas, class B banks in class II areas,

(D) Class B banks in class III areas.

For class C banks no special allowances, etc., need, in our opinion, be laid down by us. We lay down the following scales of minimum special allowances per month to be added to the pay to which an ordinary clerk is entitled:

Categories of employees	Situation			
	(A)	(B)	(C)	(D)
	Rs.	Rs.	Rs.	Rs.
Graduates	10	10	9	8
Banking diplomas holders (if non-graduates)	10	10	9	8

508

Categories of employees	Situation			
	(A) Rs.	(B) Rs.	(C) Rs.	(D) Rs.
Banking diploma holders (if graduates)	15	14	13	12
Head clerks	10	9	8	7
Comptists	10	9	8	7
Stenographers	20	18	16	14
Cashiers-in-charge of cash in Pay Offices	15	14	13	12
Cashiers-in-charge of cash in Treasury Pay Offices, employees-in-charge of Pay Offices or sub-offices.	25	24	22	20
Supervisors, sub-accountants, departmental in-charges, employees-in-charge of Treasury Pay Offices.	50	48	44	40

145. The application of these scales should be subject to the rule that in case an employee comes within more than one category he should be entitled to the highest scale or rate applicable to him.

146. As regards the subordinate staff, Mr. B. B. Singh in his award mentioned only "peons and chowkidars", providing the same scale for them for each class of banks. The U.P. Conciliation Board's Report refers to the following categories:

Daftries, assistant daftries, jamadars, guards, sentries, godown coolies, godown peons, farrashes, watermen, call boys, bearers, durwans, head peons, cycle peons, messengers, watchmen, gunners, cleaners, water-boys, chowkidars, bhistis, malis, garden coolies, sweepers, (other servants).

147. Mr. R. Gupta's award included the following in the general scale Rs. 30—2—60:

Farrashes, sweepers, cash coolies, watermen, malis, bearers, methars, punkha pullers, impositors, ink-men, messengers, etc.

Special mention was made in the said award of the following:

Categories	Scales of pay
Daftries and khansamas	General scale *plus* Rs. 2
Food stores salesman, head cash coolies, record suppliers.	General scale *plus* Rs. 5.
Compositors	Rs. 45—3—90.
Depuy head messengers	Rs. 50—3—80 (outside Calcutta). Rs. 60—3—90 (in Calcutta).
Head messengers and lorry drivers	Rs. 60—3—90 (outside Calcutta). Rs. 70—3—100 (in Calcutta).

148 Mr. Justice Divatia laid down that chokras below 18 years of age should be paid Rs. 25 per month in big banks and Rs. 19 per month in small banks, that sweepers, scavengers and hamals not working as peons should get Rs. 20—2—40 in big banks and Rs. 15—1—30 in small banks and that havaldars and jamaders should be in the scale of Rs. 65—3—80.

149. In the Central Government Secretariat, jamadars and daftries are paid on the scale of Rs. 35—1—50 and in the Bombay Government Secretariat naiks and havildars are paid respectively on the scales of Rs. 40—1—50 and Rs. 50—1—55, the latter being reduced in the mofussil offices to Rs. 35—1—45 and Rs. 45—1—50. In the Madhya Pradesh Secretariat the scale for jamadars and chopdars is Rs. 25—1—(B)—30—1—40. In the Madras Secretariat chobdars and daffadars are paid on the scale of Rs. 22—½—30 and head chobdars at Rs. 35. Under the Punjab (India) Government the scales for daftries is Rs. 25—1—30—1—35; in the Orissa Secretariat the scale for jamadars, orderlies

and daftries is Rs. 24—1/2—34; and in the Assam Secretariat daftries and jamadars and chaprasis are paid on the scale of Rs. 28—1—40. These scales should be considered in conjunction with the dearness and other allowances, which, as we found in Chapter V, do not appear to have been fixed with reference to any particular basic year or to bear the same proportion to the basic pay as the corresponding allowances of a clerk working in the same office would bear to his basic pay. The total monthly emoluments in the initial year vary, *e.g.*, in the case of havaldars, jamadars, etc., between Rs. 85 in the Bombay Government Secretariat (Rs. 80 in the Central Government Secretariat) and Rs. 40 in the Orissa Government Secretariat, the emoluments in Government offices outside the Secretariats generally being somewhat less.

150. In some of the Bombay awards there are only two classes of the subordinate staff: (1) hamals and sweepers, who get less than the ordinary rate and (2) sepoys who get paid at the ordinary rates, hamals being sometimes classed with sepoys or peons. In some awards special grades are given for sepoys and naiks as distinguished from peons, watchmen, havaldars or havildars, head peons, drivers and liftmen.

151. We lay down the following scales of minimum special allowances for certain categories of the subordinate staff:

Categories of employees	Situation							
	(A)		(B)		(C)		(D)	
	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.
Daftries	2	0	1	8	1	0	1	0
Head cash mazdoors (coolies)	5	0	4	0	3	0	2	8
Watchmen, chowkidars or cash darwans	5	0	4	0	3	0	3	0
Armed guards	10	0	9	0	8	0	7	0
Havaldars, jamadars, dafadars, naiks and head peons.	15	0	12	0	10	0	8	0
Drivers and head messengers	30	0	25	0	20	0	18	0

152. Finally, in order to prevent misunderstanding, we wish to make it clear that the expression "special allowance", wherever it occurs in this award, unless the context shows otherwise, should be deemed not to include any of the allowances dealt with in Chapter XIV of this award, *e.g.*, deputation or halting allowances, hill allowance, fuel allowance, officiating allowance, scarcity allowance and local allowance.

510

CHAPTER XII

General considerations—Retrospective effect

SECTION I

General Considerations

153. In this Chapter we propose to deal with a few general considerations that arise on the subjects of scales of pay and dearness allowance, and also the question of giving retrospective effect to the new scales of pay, etc.

154. We have laid down scales of the basic pay for different classes of banks and areas. It is our intention that the aggregate of such pay and of any special allowance (see Chapter XI) and officiating allowance (see Chapter XIV) should, in the case of each employee, be regarded collectively as his pay and should thus form the basis on which (*a*) dearness allowance, (*b*) bonus, (*c*) gratuity, (*d*) contribution to the provident fund and (*e*) pension, if any, should be calculated.

155. It should be remembered that the scales of pay and dearness allowance that we have laid down represent the minimum to which an employee would be entitled and that they are not intended to fetter the discretion or power of any employer to give his employees, or any of them, better salaries of wages or a higher dearness allowance, or additional allowances or benefits not mentioned in our award. A controversy arose in 1915 in Australia as to the effect of an award of the minimum wage. When some of the men concerned refused to accept work which was offered at the minimum rate, their action was denounced as a "strike". In the case of *Waterside Workers*[1] the minimum prescibed was 1s. 9d. per hour, the work of the employees, who were casual labourers, being to carry cargo from incoming vessels at ports. The workers had claimed that wheat should be treated as a special cargo, and that a person carrying it should be entitled to 2s. per hour. The Court had refused this claim, but certain members of the union had succeeded with some employers in enforcing the payment of 2s. per hour. Under the exigencies of the war the States had formed "wheat pools" and their Governments were willing to pay the extra 3d. per hour but did not want to contravene the decision of the Court. The Court then reassured the employers of the "wheat pools" thus: "It is not necessarily an unjust extortion for a man or a class of men who make wheat-carrying a speciality to demand more than the minimum rate for his or their services. It is quite in harmony with the principle of freedom of contract subject to the minimum wage that an employer should seek by extra wage to attract men who, as he thinks, will give him extra speed and efficiency.....I can only say plainly that there is no breach of the award or impropriety in a man refusing his services in loading wheat unless the employer pays him more than the minimum. It is all a matter for contract". The doctrine propounded in this quotation later received confirmation from the High Court (*Waterside Workers*, 21 C.A.R. 543); and Mr. Justice Higgins has made the following observations in support of it; "It would, of course, be an astounding position if, while the employer remains free to give or to refuse employment at the minimum rate, the employees were bound to take employment at that rate. The employer has the formidable power of refusing to give work to any particular man, the power even to put an end to all his own business operations; why should not the employee be free to refuse to take work? A minimum rate is in effect a restraint upon the

1. 9 C.A.R. 315; 10 C.A.R. 1.

employer; a maximum rate would be in effect a restraint upon an employee. The Act gives power to prescribe a minimum rate, and the object of that power would be defeated if a man who thinks that his services are worth more than the minimum rate were not free to hold out for a higher rate".

156. Therefore, if any bank has in force better scales of pay than those laid down by us, the result of this award would not be to supersede such scales and introduce those now prescribed in their stead, unless of course, that be the necessary legal consequence of the operation of such a provision as sub-section (2) of section 6 of Act LIV of 1949 and action taken by the Central Government thereunder. Nor would any bank be precluded from giving an employee a special promotion entitling him to more than one increment in a particular year or to wages at a higher rate than those laid down. In cases where the question of the applicability of an existing scale of pay, on the ground of its greater attractiveness, is not free from doubt, it would seem advisable for the bank to give its employees, or such of them as are concerned, an option, as soon as possible after the publication of this award, of saying whether they would rather come under the existing scale or scales of pay; and on such option being exercised, action may be taken accordingly. But it must be understood that the pay scales and scales of dearness allowance laid down here together form a combined scheme and no employee should be held entitled, *e.g.*, to choose the old scale of pay and the new scale of dearness allowance, or *vice versa*, though no one would be precluded from entering into any agreement with his employer on such lines or any other lines regarded as suitable or advantageous.

157. On the subject of cost of living index figures a word or two would appear to be called for. Wherever we have mentioned such index figures, we have referred to the figures published by the Central Government in the Indian Labour Gazette[2] or the Monthly Abstract of Statistics[3]. If it should so happen at any time in future that such publications or the publication of such figures cease or be suspended, we have no intention that the payment of dearness allowance, for instance, should also be suspended. In such an event it would be proper if the average of the cost of living index figures for the previous three months for which they have been published is made to do duty for the actual figure, and we direct accordingly.

158. We also wish to make it clear that we have been obliged to deal with the subject of special allowances in the cases of certain categories of offices or employees, as certain banks might neglect to pay its specially qualified or experienced employees any such allowances or pay them lower allowances than those fixed by us. We have not sought to impose any conditions on class C banks, with regard to this subject, but that is because their resources are poor. This circumstance should not be used by such banks of that class as may be able to bear the burden to deny any such allowances altogether to the kind of employees in question. We are also aware that there is a wide discrepancy between different banks as to the amounts actually earned by such employees. Some of them have been placed on special scales of pay, and such scales differ greatly from bank to bank and from area to area. It is not our intention to interfere with such special scales or grades of pay, where they are more favourable to the employees. Our object in laying down special allowances for some of these categories is to see that their special skills or the responsibilities which their jobs or offices involve are given some recognition by the payment of certain

2. Published by the Ministry of Labour.
3. Published by the Ministry of Commerce.

minimum allowances, that is to say, that no bank should pay less than what we have laid down.

159. It is necessary for us to consider the cases of (a) part time employees and (b) apprentices. There are certain employees in some banks, *e.g.*, sweepers, who, it is stated, do not work for the whole day. There are, besides, certain persons who intend appearing at certain examinations and who have to get a certificate showing that they have worked at certain banking institutions and they are generally allowed to work part time. In such cases it would not be proper for the employees concerned to demand pay of wages at the rates laid down by us. We direct that if such an employee ordinarily works for seven hours or less per week he should be entitled to get one-third of the appropriate rate of pay or wages and dearness allowance, that if he ordinarily works for more than seven but for not more than fifteen hours per week he should get one-half, and that if he ordinarily works for more than fifteen but not more than twenty-four hours per week he should get two-thirds, of the appropriate rate of pay or wages and dearness allowance, the calculations being made up to the nearest eight annas.

160. As to apprentices, they join an institution for their own benefit and in their own interest, and the latter does not always get work from them to any appreciable extent. It is also difficult for us to hold that they are employees, though some of them may be employed after the period of their apprenticeship is over. We leave it to the discretion of the banks to decide whether they should be paid any wages and if so at what scale.

SECTION II.

Retrospective effect.

161. We have now to consider the question of giving retrospective effect to the directions contained in this award. Different unions have pressed for different dates with effect from which they ask that the award should become operative. It seems to us necessary to bear in mind that in a number of banks the pay scales, etc., that we have laid down will be more onerous than the existing scales of pay, etc., and that in view of the peculiar nature of the banking industry the difficulties of introducing the new scales should be obviated as much as possible. Our intention, therefore, is to subject the banks concerned in connexion with the question of introduction of the new scales, to as little pressure and strain as possible. We think that whatever be the merits of the question in the abstract, the banks in class A should be required to carry out our directions regarding scales of pay and allowances with effect from a date six months prior to the publication of this award, and that the award should apply to banks in class B with effect from the date of such publication. The result of giving six months retrospective effect to our directions as to scales of pay and allowances as regards the class A banks will be to substitute such scales for those existing in the case of such banks with effect from the date which was six months prior to the date of the publication of this award, the other directions contained therein (except those which would be consequential to our directions as to scales of pay and allowances) taking effect from the date of such publication; and for purposes of increment, etc., in such banks the first year under our award will be deemed to be completed six months from the date of such publication. With regard to the banks in class C, many of them should, we think, have some

time to adjust themselves, or to decide if our directions are too onerous or to close down their uneconomic units, or to determine whether they should seek amalgamation with other banks. For this purpose we think that it would not be improper on our part to say that our award should become operative, in the case of such banks, with effect from six months after the publication of this award. We direct accordingly. We further direct that till our directions about pay and allowances become operative, the banks concerned shall be guided by the provisions of the present awards, interim or otherwise, if any, applicable to them immediately prior to this award. We also direct that all arrears of pay, allowances, etc., due up to the date of the publication of this award shall be paid within three months from such date.

162. The authorities of the Punjab National Bank have tried to convince us that in view of the losses sustained by it during the troubles consequent upon the partition of the country in 1947; it deserves to be given special concessions, *e.g.*, by being classed as a C bank, or the award not being made applicable to it for a certain period. We have heard both the management and the employees on this question but have not been satisfied that any such relief as is asked for is necessary.

163. Finally, a certain number of banks have entered into agreements with their staff regarding pay-scales, etc. We wish to make it clear that in case our directions conflict with such agreements with regard to any matter dealt with by us, our directions will prevail over such agreements, subject to the principles formulated by us in Chapter XXVIII.

CHAPTER XIII

CERTAIN ALLEGED DIFFICULTIES OF BANKS

SECTION I

GENERAL ECONOMIC SITUATION

164. Several big banks have relied on the following general factors as showing that the general economic situation in the country is deteriorating and is leading to a general decrease in the income or profits of the banking companies; *viz.*, shrinkage of deposits, difficulties in industrial expansion, difficulties in capital formation, shrinkage of investments, decreased incentives for savings, the uncertainties of external trade, difficulties in obtaining and replacing machinery, the burden imposed on industries by industrial tribunals' award, the general need for efficiency, economy and rationalization and the effects of devaluation. Figures of some banks from their balance sheets of 1949 show that although the gross earnings of banks have been maintained, the net profits, as a rule, were reduced during 1949. It is reported that the average fall registered amounts to 8% over 1948; the small banks appear to have had a bigger fall. The Exchange Banks, however, have proved an exception to this rule; but in the absence of any data it cannot be said that the general tendency has not been reflected in their operations and finances so far as India is concerned. The questions raised by banks are no doubt important and difficult and can be adequately dealt with only by experts and trained economists. But as they have same bearing on the matters at issue before us, we shall try to understand and consider a few general aspects of the economic situation in the country with reference to such matters as do not appear to us to admit of a great deal of controversy.

165. It is common knowledge that the inflationary factors that were brought into being by the exigencies of the last war resulted in raising prices and profits to an abnormal extent while rationing and price control helped to add to savings. A part of the extra money thus created found its way into bank deposits and public loans, a part went into assets like lands and buildings, increased taxation and excess profit tax, and a part into black markets which sprang up everywhere. The prevalance of low interest rates and the uncertainties of war finance encouraged people to hoard resources in the form of currency notes and bank balances a part of which was used in extensive black market operations bringing in profits at unprecedented rates. In March 1945 the demand deposits of the banks had risen by over 400 per cent and the banks cash and the note circulation by about 500 per cent and wholsale prices had risen by about 250 per cent above the pre-war levels. At the end of the war there was an accession of almost unrestrained optimism in the investments, market and banks deposits also continued their upward trend.

166. The partition of 1947 and the events connected therewith brought about large losses of wealth, considerable unemployment and great unproductive expenditure of public funds. In 1947 and 1948 bank deposits began to show a falling trend, which became more marked in 1949; but there was an improvement in the banks loans and advances. The purchasing power of the people improved and prices, which had become fairly stable between 1943 and 1945, went on rising. Savings seem to have fallen substantially since this time, but

this was not due to a fall in the income levels but largely to an increased tendency to consume, apart from the factors of heavy taxation and higher cost of living. Spending has since been stimulated by the motive to evade high taxation and to prevent the detection of illegal profits. It also seems that a larger part of the national income is distributed among the consuming classes whose "liquidity preference" has been communicating itself, for various reasons, to other classes also. In short, in this period beginning with the attainment of independence and ending with the earlier part of 1949, the tendency in our economy apart from temporary fluctuations, was towards a fall in savings and a decrease in investments, a fall in the profits of industries, and an increase in the volume of purchasing power. Certain factors have of late been counteracting these trends. We notice some of them below.

167. Immediately after independence was attained, the Government of India, in the first flush of enthusiasm, embarked on certain policies and experiments which in the light of later experience have had to be abandoned, postponed or modified, *e.g.*, the removal of food-grains control and the initiation of development projects or programmes beyond the capacity of the country. The mistakes underlying such policies were gradually realised and a sense of realism developed in an increasing measure. This, in turn, led gradully to a restoration of public confidence in the capacity of Government to deal more effectively with the economic problems facing the country. As will be shown below, trends towards improvement in the different sectors of our economy became increasingly noticeable with the lapse of time, and of the factors responsible for this result the policies and attitude of Government have not been the least important.

168. The more conservative and helpful attitude of Government towards, industry, as shown by the concessions made to industry and the assurances given from time to time with regard to measures like the Industries Regulation Bill, their efforts towards internal economy, the halting of long-term plans involving initial unremunerative expenditure and a more rational control of our external trade, as well as the comparative stabilization of prices and the cost of living during some time past, have encouraged even industralists to make optimistic utterances [1].

169. As to production, according to the index figures of industrial production in India published by the "Eastern Economist" and those of Indian industrial activity published by "Capital" in recent months; though the peak figures attained in 1945-46 have not since been attained, the present day figures cannot be regarded as unduly low or unsatisfactory. According to the White Paper issued by the Finance Ministry along with the last budget, industrial production in definitely showing an upward trend. The following instances of increase in production in 1949 over these for 1948 are taken from the said paper:

Steel from 8,54,000 tons to 9,25,000 tons,
Cement from 1.5 million tons to 2 million tons,
Coal from 29.9 million tons to 31.09 million tons,
Paper from 97.9 thousand to 103.8 thousand tons,
Power alcohol from 3½ million gallons to 6.7 million gallons,
Superphosphates from 21,000 tons to 43,000 tons,
Diesel Engines from 1025 to 2048.

1. See, for instance, the speech of Mr. G. D. Birla, before the Federation of Indian Chambers of Commerce of the 12th March 1950.

516

170. In cotton textiles and jute manufactures, production showed a downward trend mainly because of difficulties as to the import of raw materials as shown by the following figures :

	1948	*1949*
Cotton Textiles (million yards)	4,320	3,910
Jute (thousand tons)	1,091	946

In view, however, of the recent agreement between India and Pakistan the prospects of the import of cotton and jute from Pakistan are likely to improve. "The jute industry, one of India's biggest earners of foreign exchange and one most seriously affected by the exchange deadlock with Pakistan, has taken prompt and vigorous measures to react towards self-sufficiency in raw materials in the shortest possible time[2]." As regard other industries noticeable improvement occurred in the production of electric motors, bicycles, sulphuric acid, transformers and electric lamps, while the 1948 levels were maintained in the production of motor car batteries, cigarettes and matches. Imports of machinery appear to be definitely on the increase, reflecting an improvement in industrial activity as shown by the following figures prepared on the basis of those published in the "Times of India" of the 22nd April 1950 :

In Crores (per month)

1946-47	1947-48	1948-49	1949-50
2.5	4.5	6.5	9

"The bicycle industry is being expanded and so are the manufacturing units for caustic soda, soda ash, superphosphates, sulphuric acid, diesel engines and power alcohol." An important factor helping industrial activity in general has been the improved position of rail transport, as shown by statistics published by the Central Government in "Monthly Survey of Business Conditions in India."

171. As to prices, according to the White Paper there was an appreciable fall in the index for whole-sale prices from December 1948 to March 1949. This trend was reversed in April 1949 and prices rose for 5 months. Since then there has been a noticeable drop. Important commodities which go to make up the cost of living have registered a fall (food articles, for instance, having declined by 23 points). On the whole owing largely to Government policy as regards price control, external trade and incentives for increased domestic production prices appear to have attained or to be attaining a fair degree of stability. It may also be pointed out that the cost of living indices of the principal cities in India do not show much variation during the year 1949. The Bombay, and Madras indices, for instance, stood at 295 and 333 in November 1949 compared to 301 and 331 respectively in January 1949 (base 1939--100). The Kanpur index has, however, shown a great fall 506 to 451 during the same period. According to the statistics collected by the International Labour Office during the 12 months from December 1948—January 1949 to December 1949—January 1950, the cost of living decreased in 11 out of 34 countries and amongst these eleven countries, France, Switzerland, Italy, United States and India are prominent (*vide Eastern Economist* of April, 28, 1950, page 637).

172. In the field of management—labour relations the improvement noticed in 1948 was not only maintained but further increased in 1949, as the following figures will show :

Year	No. of disputes	No. of workers involved.	No. of man-days lost.
1947	1,811	1,840,784	16,562,666
1948	1,259	1,039,120	7,837,173
1949	914	684,188	6,380,887

2. The *Times* Review of Industry, April 1950, page 71.

Out of the 6,580,887 man-days lost in 1949 strikes accounted for the loss of 3,410,453 man-days and lock-outs for the loss of 3,170,434 man-days according to a statement issued by the Ministry of Labour [No. Gen. 8 (11) dated the 23rd March 1950]. "In this result a special tribute is due to Labour the large majority of which has placed the country's interest before its own".

173. The end of 1949 recorded an appreciable reduction in industrial disputes as compared with the earlier period of that year. According to the statistics of the *Labour Bureau*, there were 78 disputes during December 1949 as against 90 in November, the number of workers involved respectively being 55,192 and 104,510 and the number of man-days lost being respectively 416,131 and 451,200. Of the 78 disputes in December, 12 were lock-outs, involving a loss of 277,757 man-days (67% of the total loss), 11 of them being in West Bengal. The corresponding figures for January, February and March 1950 were as under:

	January 1950.	February 1950.	March 1950.
Disputes	100	88	79
Workers involved	76,152	46,546	42,342
Man-days lost	231,644	337,603	487,174

Lock-outs during March 1950 numbered eight and accounted for a time-loss of 387,921 man-days or nearly 80 per cent of the man-days lost during the month. Bombay showed an increase in March over February in the number of disputes as well as in the number of man-days lost.

174. As to external trade, during the period under consideration, import control was at first liberalised. It would seem, with a view to utilizing our sterling balances. This led to a large volume of imports resulting in excessive withdrawal from the said balances. Such imports served in general to keep in check inflationary forces and the import of raw materials and capital goods added to the strength of our economic structure. Import trade, besides, provided profitable outlets to the banks for short-term investment of their resources. It, however, led to an adverse balance of trade which had to be corrected by the tightening of import controls and by the encouragement of the export trade. The total value of exports during the year 1949 was 428 crores as against 419 crores in 1948. "What is more satisfying perhaps is the fact", said the Commerce Minister, addressing the Export Advisory Committee on the 11th February 1950, "that the year 1949 was a record year both in terms of quantity and in terms of value for the export of a number of commodities, namely, tea, tobacco, cotton waste, black pepper and spices in general". As to the export of cotton textiles, which had made "a very good contribution to our earnings of foreign exchange" the Commerce Minister said that the improvement in export, which started about the middle of 1947, received an impetus after devaluation. In the third quarter of 1948 exports to hard currency areas touched the lowest level of Rs. 21.31 crores; but since devaluation the last quarter of 1949 recorded exports to such areas of the value of Rs. 44.41 crores, an increased of over 100 p.c., although the amount of dollars earned has suffered reduction to the extent of the devaluation. The export of cotton piecegoods in 1949 was 487 million yards as against 334 million yards in 1948.

175. According to the White Paper and the Finance Minister's Budget Speech, exports had improved and the sterling balances had risen to Rs. 832 crores by the end of January 1950, following the devaluation of the rupee, from Rs. 820 crores in June 1949 and Rs. 776 crores in the 1st week of September. Exports in the last quarter of the year (1949) rose to Rs. 139.97 crores against

the quarterly average of Rs. 107.08 crores in 1948. According to the "Times of India" of the 22nd April 1950, devaluation has made Indian cloth nearly the cheapest in the world with the result that export of Indian cloth are expected to hit "an all-time high" during 1950, with an officially estimated shipment of cotton textiles worth well over Rs. 100 crores. This figure compares very favourably with the country's foreign exchange earnings of nearly Rs. 39.84 crores from cloth exports during 1948-49 and Rs. 20.48 crores during the previous financial year. The view expressed above is perhaps too complacent and does not appear to take sufficient note of factors like the impending Japanese competition and the still unresolved international difficulties in the fields of commerce and exchange.

176. Below are given figures regarding imports and the exports of Indian merchandise during the period April 1949 to May 1950:

VALUE OF THE TRADE (RUPEES IN LAKHS)

	Imports	Exports Indian merchandise.	Balance, deficit or surplus.
1949 April	51,80	32,16	—19,64
May	64,12	27,99	—36,13
June	59,93	28,50	—31,43
July	56,92	29,30	—27,62
August	51,00	33,90	—17,10
September	38,63	34,04	—4.59
October	58,54	34,89	—23.65
November	43,17	51,59	+8,42
December	35,78	51,01	+15.23
1950 January	36,85	47,49 (a)	+ 10.64
February	26,56 (b)	45,33 (a)	+ 18,77
March	30,20	46,20 (a)	+ 16,00
April	38,55	31,29 (a)	—7,26
May	48,72 (b)	33,97 (a)	—14,75

The figures where surplus balances begin represent periods in which stringent import restrictions were imposed, accumulated demands were being supplied and certain countries became busy with stock piling programmes (*e.g.*, relating to manganese and mica). Since April last, however, we seem to be again having deficit balances, so that we may say again that there is not a great deal of room for complacency as regards our external trade. At the same time there do not appear to be sufficient grounds for taking a pessimistic view about the future.

177. In a recent review of our foreign trade, the *Times of India,* dated the July 12, 1950 observed, "An all-time record total of Rs. 1,043 crores, we reached in India's foreign trade in 1949-50, an increase of Rs. 92.15 crores over the previous year. The overall adverse balance of trade in merchandise amounted to Rs. 77.81 crores, as against Rs. 103.91 crores in the previous year, showing a decline of Rs. 26.10 crores." The review further stated that compared to 1948-49 exports improved in 1949-50 by 13% while imports showed a rise of 8.2%. A phenomenal increase was recorded in the export of spices from Rs. 5.46 crores in 1948-49 to Rs. 18.18 crores in 1949-50 and of cotton yarn from Rs. 1.3 crores to Rs. 11.3 crores. Exports of cotton manufactures reached a record, while tea exports increased in value from Rs. 63.6 crores to Rs. 72 crores. Imports of machinery of all kinds were the highest in India's history, amounting to Rs. 105.51 crores.

(a) Including re-exports.
(b) Excluding imports of foodstuffs on Government account awaiting adjustment.

178. The problem of capital formation in India, however, continues to remain difficult. The main reasons for this are high taxation, the shift in the distribution of incomes, its consequences on savings and investment with special reference to the "liquidity preference" of large sectors benefiting by such distribution and the uncertainties as to income-tax assessment in many cases pending before the Income-tax Investigation Commission. During war time and the early post-war years industrial production was largely kept up by the employment of extraordinarily high profits, a very large part of which represented profits unrelated to productive efficiency. With the comparative stabilisation of prices, however, the possibility of realising unusually high profits is preceding. Industry will now have to reconcile itself to more normal or perhaps more stringent conditions than have existed during the last decade and settle down to wrestle with its internal weaknesses and defects, in as realistic and resolute a manner as possible. The Finance Minister has revealed that the terms which India can give to foreign capital are not likely to attract private American investment and that it was "neither desirable nor feasible", to meet the country's requirements through international loans. The amount of foreign capital invested in Indian industries during 1948 and up to September 1949 was only about 6 crores.

179. The difficulties in the formation of capital are reflected in the fall in the stock exchange values from the boom levels of 1946-47. The security price indices have fallen steeply since; but those levels had every appearance of an abnormal and temporary speculative activity. The table given below shows the extent of fall since 1946-47:

(Base 1927-28 = 100) [3]

Year	Government Securities.	Fixed yield industrials.	Variable yield industrials.
1946-47	120.4	197.8	268.6
1947-48	117.2	169.9	131.9
1948-49	114.7	156.9	162.4

During the last year, however, the fluctuations in security prices and the prices of shares have lain within a narrow compass, suggesting definite signs of stabilization in the investment market. The decline in the stock market values appears to have been the prelude to greater economic stability and to the revival of normal and healthier conditions and modes of investment.

180. As to the effects of devaluation, according to the White Paper, devaluation provided the Government of India with an opportunity to review the entire policy and the "eight point programme" was evolved. Devaluation does not seem, as in the United Kingdom, to have had the effect of appreciably raising the internal prices, and it appears to have noticeably stimulated our exports. Failure by Pakistan to devalue her rupee has no doubt created complications and trade between the two dominions was brought to a deadlock, to resolve which attempts have been and are being made at the highest levels.

181. We end this review, inadequate as it is, by reminding ourselves that no country today is free from difficult economic problems arising out of the last war, and that none can ignore the fact that our Government and our industries have still to solve many intricate questions of policy, management and administration. On the one hand are the following factors against taking a too optimistic view of the present trends in our economy; our budgets (Central and States)

3. Report on Currency and Finance for the year 1948-49 (published by the Reserve Bank of India), page 197.

and the balance of our payments are still generally deficit in character; the population is steadily rising; production, both agricultural and non-agricultural, is not increasing as much as the circumstances demand; the pressure on the standard of living, as a whole, remains substantially unrelieved, although certain sections are being unduly benefited while other sections are haunted and harassed by unemployment. On the other hand there is no sufficient evidence that we are gradually drifting into a situation worse than the present; there are indications that our economic position and trends are pointing towards stabilization; and that on the whole the rupee value (as distinguished from the real value) of our *per capita* annual income in steadily rising; from Rs. 204 in 1945-46 it rose to Rs. 228 in 1946-47 and the estimated income for 1948-49 was Rs. 2724. Although it is never very safe to make general assertions regarding the economic possibilities of a country which lie in the womb of the future, we think that we should be justified in saying that we have found no sufficient reason for believing that our present financial and economic circumstances call for such dark or dismal forebodings as to affect materially our conclusions on the subject matters with which we are immediately concerned.

SECTION II

Banking Trends

182. From the point of view of the banks, however, the most important problem is the serious fall in deposits, which have been called the raw material of the banking industry, with the consequent possibility of serious inroads into their earning capacity. We are aware that this question cannot be discussed in isolation and that it is interrelated with the entire economy of the country, but as great emphasis has been laid on it during the proceedings, we shall make an attempt to consider this question in as general terms as possible.

183. It has been brought to our notice that deposits of scheduled banks, which at the end of 1947 stood at Rs. 936 crores rose to Rs. 987 crores in July 1948, but came down to Rs. 934 crores at the end of 1948 and to Rs. 833 crores at the end of 1949. We give below the figures of annual averages of the total deposits of such banks from 1938-39 to 1949-50 as well as other relevant figures [5]:

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4. "National Income of the Indian Union Provinces, 1946-47" published by the Government of India, Ministry of Commerce, and the recent press note on the subject.

5. Source: Reserve Bank of India's Annual Reports and Monthly Bulletins.

Year	No. of Banks	Demand deposits.	Time deposits.	Total deposits	Cash and Balances with Reserve Bank	Advances	Bills discounted.	Total of advances and bills.	Ratio of figures in last column to deposits
								(Rupees in Lakhs)	
1938-39	51	123,81	103,30	227,11	22,26	111,34	4,60	115,94	51.05
1939-40	55	132,64	101,95	234,59	24,03	121,47	4,97	128,44	53.90
1940-41	58	155,79	161,19	256,98	44,04	117,70	3,69	121,39	47.24
1941-42	58	200,13	103,57	303,50	45,31	115,32	4,84	120,16	39.59
1942-43	61	306,28	104,21	410,49	63,70	95,68	2,18	97,86	23.83
1943-44	75	456,63	142,78	599,41	84,20	156,14	6,69	161,73	26.98
1944-45	84	584,80	194,12	778,92	116,56	224,22	11,16	235,38	30.22
1945-46	91	654,83	259,52	914,05	124,71	265,07	16,05	301,12	32.94
1946-47	96	725,54	323,11	1048,65	122,36	405,32	21,32	427,71	40.79
1947-48	101	708,65	343,89	1050,64	140,73	427,54	16,82	444,36	42.30
		(74,66)	(28,39)	(10,525)	(10,25)	(39,40)	(100)	(40,40)	
1948-49	94	674,56	303,88	978,44	114,14	424,85	16,44	441,29	45.10
		(83,74)	(18,56)	(10,230)	(15,20)	(34,42)	(70)	(35,12)	
1949-50	94	597,79	272,59	870,38	100,32	423,74	15,35	442,09	50.79
April, 1950	95	698,90	267,87	866,77	83,06	486,70	14,43	481,22	55.52
May, 1950	95	589,62	272,04	861,66	85,88	481,71	11,92	473,63	54.97
June, 1950	95	534,56	274,11	858,67	98,84	448,44	11,11	459,55	53.32

NOTE.—Data relate to undivided India up to 1947-48, those for 1948-49 are for the Indian Union. Figures shown in brackets which relate to Pakistan are averages for the periods 15th August 1947 to March 1948 and April to June 1948 in respect of the years 1947-48 and 1948-49.

184. The deposits which accumulated during the war years and sometime later are no doubt to be regarded as excessive in the sense that they were abnormally large in relation to both the capital structure of the banks and the outlets which were available to the banks for the utilization of their funds in productive enterprises; and it was inevitable that business houses which deposited the moneys which they could not put to such use would later withdraw appreciable parts of them for purposes of successful investment. That by no means can be regarded as an undesirable development, and banks whose interests coincide with those of the national economy as a whole should be last to bewail or complain about such development.

185. It will be seen from the table given above that in the six war years the total of demand and time liabilities increased from 234.59 crores in 1939-40 to 778.92 crores in 1944-45, an increase described as "phenomenal in the history of joint stock banking in India" in the Annual Report of the Reserve Bank of India on Currency and Finance for 1945-46. Between July 1939 and June 1945, 147 new banks were started out of which 82 were started after June 1943. As against the slow increase in the number of scheduled banks between July 1935 and September 1939—from 50 to 59—the number of such banks increased between September 1939 and September 1945 from 59 to 87. During the said period there was, besides, "too rapid an expansion of branch banking, particularly among the smaller banks, without careful preliminary prospecting in each case in the light of existing banking facilities, the size of available business and the likely changes therein, the overhead costs and probable scope for reasonable earnings." 6

186. It will be noticed that the ratio of the total of advances and bills discounted to the total of deposits, which fell to the abnormally low figure of 23.83 in 1942-43 is now slightly higher than the pre-war (1938-39) ratio of 51.05, and this, again, can hardly be regarded as an unhealthy or undesirable development.

187. The following figures were recently published in the "Eastern Economist":

Share in Annual National Income (amount in Rupees Crores)

Sector	1939-40		1947-48		1948-49		Change in 1948 over 1939		Change in 1948 over 1947	
	Amount	Percentage of total.	Amount	Percentage of total.	Amount	Percentage of total.	Amount	Percentage of total	Amount	Percentage of total.
Agricultural and allied occupations.	95,27	49.5	212,95	54.0	246,52	55.0	151,25	+5.5	33,59	+ 0.0
Industrial sector.	37,00	19.2	98,00	24.9	115,45	25.7	78,45	+6.5	17,45	+ 0.8
Tertiary sector.	60,26	31.3	83,23	21.1	86,65	19.3	26,39	—12.0	3,37	—1.0
	192,53	100.0	394,21	100.0	448,62	100.0	256,09	..	54,41	..

It was said that the above figures showed that there had been an enormous shift in the capacity to save the middle classes who formed the bulk of investors and depositors having become poorer to the extent of 40 per cent and the sector which had newly acquired great purchasing power showing no disposition to fill the vacuum.

6. Annual Report of the Reserve Bank of India on Currency and Finance for 1945-46.

188. There may be substantial truth in those inferances, though they may not contain the whole truth about falling deposits. Factors like the post-partition riots leading to widespread loss of property and the consequent want and destitution among large masses of people, the uneconomic closure of banks' branches in Pakistan, the banking crisis in Bengal, as well as liberalization of the import policy by Government and stricter collection of income and other taxes, must also have played their part in reducing the banks' deposits. Many of the factors leading to this result have been temporary, and factors like business concerns drawing upon their past saving in order to finance their schemes of reconversion and expansion are not likely to last indefinitely; and the Finance Minister's statement in the course of his speech while opening the new premises of the Bank of India in Bombay on the 24th April 1950, that "deposits appear to have steadied at a lower level in recent months" is supported by the following monthly figures of the total deposits of scheduled banks during the period from June 1949 to June 1950:

(Rupees in lakhs).

1949	
June	876,35
July	869,45
August	869,54
September	866,47
October	864,86
November	862,85
December	854,66
1950	
January	857,08
February	865,32
March	856,81
April	866,77
May	861,66
June	858,67

189. From the point of view of the banks' income, however, it is not deposits but their advances and loans to trade and industry that are important. In the period subsequent to the country's attainment of independence, in spite of the decline in deposits the advances and loans have maintained a rise, a fact which has helped the banks to maintain their gross earnings in 1949 practically on the same level as in 1948. In the "International Banking" supplement to the Financial *Times of London*, dated the 24th April 1950, it has been observed:

> "The unprecedented demand in India for bank finance during the early part of the past year emphasised the need for more capital, which is required not only for the development of new industries, but also for the rehabilitation of those already established. The great weight of taxation, in India as at home, has made it impossible, in recent years, for many industrial concerns to plough back profits for use as capital reserves, and has forced them to approach the banks for accommodation which formerly was financed from their accumulated surpluses."

In the United Kingdom the percentage of advances and bills discounted to their deposits was between 40 and 45 in September to December 1949; and it is stated in the said supplement, "with regard to the relationship between advances and the national income, the normal sympathetic relationship between the two was rudely severed by the war and——a further expansion in advances would merely help to restore something of that relationship with the national income which has been customary over long periods." The ratio of advances and bills discounted to total deposits in the United Kingdom appears to be rising; during the period

January to April 1950 it rose from 45.27 to 48.05. A similar upward trend in this ratio has been noticeable in India also since November 1949; during the period November 1949 to April 1950 it has risen from 46.30 to 55.52. The "Commerce" in its annual number for 1949 in an article reviewing banking trends in 1949 observed as follows:

> "Although the resources of the Banking system declined during the year, the trend of profits of the system as a whole is unlikely to have suffered any marked set-back, as the commercial advances stood at a high level during the major part of the year and as the rate of interest earned on such advances too was relatively higher than in the previous year. This, however, does not mean that all the banks will be able to show a better profit for 1949 than for 1948. The profits of smaller institutions, as well as those of the new ones, with some rare exceptions, must have suffered a set-back, while the bigger and long-established units should be able to report the same, if not higher profits. In any case, the profits of the latter must be sufficiently large to enable them maintain their dividends for 1949 at the 1948 levels."

It may be stated that most of the banks have maintained their usual dividends in 1949. The article proceeds to say:—

> "The most outstanding feature of the banking trends in 1949, as disclosed by the above analysis, is the return of the disposition of assets to the pre-war pattern. The dominance of Government securities among the porfolios of commercial banks, which began in the war years and persisted for nearly three years after the war, disappeared during the year, and commercial advances reassumed the pride of place they held in pre-war years."

190. The increase in advances and loans, in spite of a fall in resources, does not appear to have lessened the banks' liquidity. The ratio of the total cash held and balances with the Reserve Bank to the total deposits has been well maintained above the traditional level of 10%. In 1949 and 1950 for three months it was slightly below 10%, but otherwise it has fluctuated between 14.07% and 10.08%, the average for 1949-50 being 11.53%. The big banks, however, have shown a greater desire to ensure liquidity and the ratio in some banks is as high as 22.6%. The necessary liquidity may have been maintained partially by the sale of securities which yield a smallar income than advances. The monthly bulletins of the Reserve Bank for March and June 1950, show that investments of scheduled banks, declined from Rs. 456,78 lakhs in November 1948 to Rs. 342,59 lakhs in May 1949 and stood at Rs. 388,19 lakhs in October 1949 and Rs. 361,44 in December 1949.

191. The Big Six in the Indian banking system—the Imperial Bank of India, the Central Bank of India, the Bank of India, the Punjab National Bank, the United Commercial Bank and the Bank of Baroda—dominate banking in India to nearly the same extent that the Big Five in London do in the English banking system. At the end of 1949 their total time and demand deposits (201.1 and 335.12 crores respectively) amounted to 62.8 per cent of the total of the deposits of all the scheduled banks (269.04 and 584.85 crores respectively). They are more conservative than the other scheduled banks in granting loans and advances: their advances and bills discounted amounted to 39 per cent of total deposits against 62 per cent in the case of the other banks. "The impression of soundness is confirmed by the comparison of the figures relating to the

six banks with those of the Big Five and the Clearing Bank of London. The position at the end of 1949 is summarised in the table below:

Balance sheets of the Six Indian Banks compared with those of the Clearing Banks of London

	Percentage of investments to total deposits.	Percentage of advances and acceptances discounts to total deposits.	Cash Ratio.	T.D.R.s. or Treasury Bills.[7]	Money at call or short notice.
Six Indian Banks	42.0	39.0	16.7	..	.7
Clearing Banks of London ..	24.4	42.5	8.6	12.8	9.28

192. The conclusion that appears to emerge from this brief consideration of the difficulties of the banks is that although the decline in their deposits is substantial, it really represents an aspect of the general economic situation which was inevitable but which need not lead to pessimism. The principal banking institutions were rightly congratulated by the Finince Minister recently on the ability and care with which they had fulfilled thier responsibilities; and so long as they continue to recognise them and seek to fulfil them with their usual competence and foresight the problems which confront them, so far as one can forsee, are not likely to assume an unwieldly magnitude or become incapable of solution.

SECTION III

Uneconomic Units: alleged difficulties of Banks

193. Some banks in their written arguments have raised the questions of the existing cost of the establishment and the need for rationalization. Industry often speaks of the need for greater rationalization, but apparently it is generally forgotten that rationalization has at least five aspects, namely, reduction in the number of inefficient and insufficiently employed workers, resistance to extravagant demands for wage increase, increase in the efficiency of management, rational curtailment of the expenses at the top and elimination of the uneconomic units in an industry. The last three are often conveniently ignored and undue emphasis is laid on the first two.

194. That there are uneconomic units in the banking industry is apparent from the number of recent bank failures. Exact statistics about them do not appear to be easily available. The two orders of the Government, dated the 13th June 1949 and the 28th September 1949, and the recent order of the 21st February 1950 contain an imposing list of banks which have already gone into liquidation or are under moratorium or are working under schemes of arrangements. According to the calculations to be found in the written arguments submitted by the Manager, United Commercial Bank, Ltd., this number amounts to 62. The banking crisis in Bengal in 1948 and the failure of some fairly big scheduled banks are too recent to be forgotten. The Finance Minister recently mentioned on the floor of the Parliament that 23 banks including one scheduled

7. Included among investments.
8. "Banking in 1949", the Eastern Economist, May 5, 1950, page 679.

bank had failed in 1949. According to the information available to us, in the period from 1934 to 1945 some 700 banks failed, while during the period of 30 years from 1913 to 1943 some 964 banks with a paid-up capital of Rs. 963.2 lakhs failed. During 1913-1918, 95 banks failed while the number of failures in 1919-1925 and 1926-1934 were 94 and 163 respectively.

195. We are, however, more concerned with the causes of such failures than with their number. The early failures were probably largely due to causes inevitable in the formative stages of banking in any country. But it is interesting to note that certain causes appear to have been the common and recurrent features of such failures. The Central Banking Enquiry Committee noticed in their Report (1931) glaring instances of banks with meagre paid-up capital having failed (para 694) and banks whose cost of management was disproportionate to their earnings, maintaining "larger and more expensive establishments than was justified by the exigencies of business at different branches." (Paragraph 547); at page 532 of their Report Mr. N. R. Sarkar, one of the members, pointed out that mismanagement and dishonestly in banking were by no means a monopoly of Indians, that on the eve of her commercial expansion Great Britian had a number of banks failures and that during the period of 1921-1929 the bank suspensions in America numbered 5,642 involving over 1,722 million dollars, while during the first eleven months of 1930 as many as 981 banks, with total deposits of 515 million dollars suspended business. In "Joint-stock Banking in India" by Mr. D. S. Sarkar (1938) the main causes of 95 banks going into liquidation in the period 1913-1918 are given as mismanagement, fraudulent management, bad assets, misleading balance-sheets, high rates of interest for deposits and speculative business, insufficient cash reserve and the performance of non-banking services. In "An Outline of Banking System in India" by Mr. M. V. Subba Rao (1948) the main causes of bank failures are given as inadequate capital, disproportionate ratio between capital and reserves on the one hand and deposits on the other, loans on inadequate security and speculative business, assets held in not easily realizable form, misunderstanding of the real nature of requirements of sound commercial banking and the giving of excessive long term credit. When five scheduled banks in West Bengal recently suspended payment, "Commerce" wrote, in its issue of the 3rd December 1949, "The causes for the failure of these banks are lack of experienced staff, over-extended loan portfolios, reckless policy of branch expansion, declaration of high rates of dividends despite poor reserves, speculative transactions in Government securities and unsound policy in granting loans and advances". The Finance Minister also stated that the main cause of the failure of 23 banks (already referred to) was unsound policy in the matter of investment, bank expansion and deposits. The principal causes in all these statements, it will be observed, are not related to extraneous factors, but to the internal management.

196. There is another aspect of this question of bank failures. In the Reserve Bank's Annual Report on Currency and Finance for the year 1945-46 it was observed (page 93); "There has been, however, a noticeable tendency for too rapid expansion of branch banking, particularly among the smaller banks without careful preliminary prospecting in each case in the light of existing banking facilities, the size of available business and the likely change therein, the overhead costs and probable scope for reasonable earnings. This has resulted in the opening of too many branches in some places." A number of branches of certain banks which appear to have been opened without sufficient foresight and caution have been recently directed to be closed by the Reserve Bank of India in the exercise of its powers under the Banking Companies Act 1949.

197. It is unfortunate that many of the promoters of banks in this country are not sufficiently alive to the requirements of sound banking. Owing to the powers of the Reserve Bank of India of supervision and control vested in it under the said Act, may of the abuses and defects in the management and organization of banks will now, it is expected, be kept in reasonably effective check, and its powers of rendering assistance to banks, when needed, should have a salutary effect. A recent instance of such assistance is the loan of Rs. 87 lakhs given by the Reserve Bank to the Exchange Bank of India and Africa. Sixty-two banks are reported to have been inspected by the Reserve Bank up to the end of January 1950 and their programme for the current year contemplates inspection of 40 more.

198. One way which uneconomic units of the industry may usefully traverse is that of amalgamation into bigger and more economic units, a procedure which, as is clear from a very recent instance, both the Reserve Bank and the Central Government are anxious to promote and encourage. If the scales of pay and allowances now laid down by this award prove too burdensome to particular banks that fact alone, in our opinion, can hardly be used to suggest that such scales are unduly high; it would, in our opinion, rather indicate that the units which are unable to give effect to the award are really uneconomic and ought to consider rationalization through the path of more efficient and economic organization or of amalgamation. We may also point out that the need for amalgamation has been recognized by some of the prominent bankers in their recent speeches.

199. In framing scales of pay and wages we have sometimes had to refer to the scales fixed by Government for their employees. Some of the banks have deprecated such reference as unhelpful or misleading. On this point the following quotation from the report of the Anderson Committee in England of 1923, given in Herman Finer's "British Civil Service", is relevant:

> "Two general considerations about the pay of State servants occur to us. On the one hand the State should hold the scales even between its own servants and those through whose enterprise its servants are paid. On the other hand, the employees of the Crown would have a real ground for complaint if their pay were related to wages in industries only in the time of low wages. If they do not get pay relatively to the boom they must be spared the full severity of the slump. The State as a model employer offers security, a pension, a dignified service and a moderate wage in exchange for the excitement and possibilities of private employment."

In more than one of the written statements of the banks the necessity for their employees possessing the qualities of industry, intelligence, efficiency, honesty and a sense of responsibility in a greater measure than in other industries has been stressed. The Central Bank of India, Limited, for instance, in its written statement has said: "Standards of accuracy and honesty have to be exceptionally high among the employees of the bank and their service discipline must be entirely different from those working in textile or other industry." The United Commercial Bank, Limited, has said in its memorandum of arguments, "Mistakes can be indeed very costly and ruinous in a bank. If a worker in a mill becomes careless the resultant loss from his negligence would be worth a few annas or few rupees; but a mistake in a bank, say by adding one zero to a cheque of Rs. 10,000 may mean a loss of Rs. 90,000. Similarly, entering the amount of a deposit in a wrong account may mean loss of that amount to the

bank." The question, however, is not merely that of insuring against "mistakes." A wage scale must primarily insure against the feeling among the employees that they are unable to meet the ordinary responsibilities of their life and that they are thus being unfairly treated; it should also be such that they do not succumb to the temptations that often come in their way, oftener than in most other industries; it should further be such as to inspire and maintain their loyalty and co-operation. The last factor is important but is often forgotten or lost sight of by the employers. There is no reason why Government service should, by being regarded as the best kind of service for clerks, continue to attract the best kind of recruits from the middle class. At least the bigger banks should not be satisfied with the second best or a lower class of recruits, and they must be prepared to pay at a scale sufficient to compensate the relative insecurity of tenure and (in many cases) the inadequate retiring benefits inherent in their services, as compared with the benefits and advantages to be found in Government service. The result of the introduction of better scales of pay and allowances than exist at present is likely to be the gradual elimination of inefficiency, dishonestly and deliberate shirking of work to a marked degree, so that in time the introduction of improved methods of organization would be rendered possible.

200. The United Commercial Bank, Limited, has sought to show, by means of comparative statistics, that whereas the ratio of working expenses to gross profit in American banks has been between 56.4% to 59.9% during the 20 years 1929 to 1948 (the working expenses consisting of all items of expenses other than interest paid which is deducted from gross earning to give gross profit), such ratio for all scheduled banks in India in 1948 was 66.3% (being higher for the B and C groups of banks, *viz.*, 70.6% and 65.4% respectively). According to the bank's figures the expense ratio of the B group of banks (the grouping being taken from the Government Order) has gone up steeply since 1944: 60.4% in 1944, 66.8% in 1947 and 70.6% in 1948 "as a result of improvement in terms of employment introduced either voluntarily by banks or because of Awards of Tribunals." The word "voluntarily" refers to the fact that certain banks themselves found the existing scales inadequate and materially increased the precentages of dearness allowance. We have not been supplied with any figures showing the resources or working capital of the American banks. We have little doubt that if we bear in mind the immense gap that separates the resources of our banks and those of the American banks it would become apparent that it is possible for the latter to distribute their overhead expenses in a way which is not possible in the present stage of our banking development. In the Annual Report of the Federal Deposit Insurance Corporation of the United States of America for the year 1946 we find (page 150) that in that year the "current operating expenses" were 61.62 per cent of the "current operating earnings", the percentage being as high as 65.94 in the small banks.

201. The bank has further contended: "Taking the position of A, B and C group of banks as a whole the average ratio of their expenses on staff to gross profit has gone up from 34.6% in 1944, practically the same as for the American banks to 44.1% in 1948, *i.e.*, by 10 points or 30%. Study and analysis of payments to staff by Indian banks, in relation to their income or earning capacity, thus proves beyond doubt that whereas before 1944 they followed the prudent policy dictated by conditions and considerations of the banking industry throughout the world they have deviated or have been compelled to deviate by awards, from the correct principles relating to costs and salaries. Questions of prices and living costs, even assuming they are serious, though in fact they are not, should not be allowed to endanger banking by further increasing their already heavy working and staff expenses."

202. It is, however, to be observed that these percentages are based not only on the salaries and wages, paid to the clerical and subordinate staff but also on the salaries paid to the officers. Figures regarding these items were called for from the banks which raised the question of their capacity to pay, but some of them withheld the information regarding the upper managerial staff on the ground that whereas they had been asked to state the "grades and scales of pay" of those who were not workmen, there were no fixed grades or incremental scales attached to such officers' posts. Persistent allegations have been made by the employees' advocates and representatives that in nearly all banks the administration is top-heavy. Even on the information supplied, however, we have found that the proportion of the total of salaries and allowances paid to workmen to that in the case of non-workmen varies somewhat widely from bank to bank, from 1 : .41 to 1 : 1.03, so that in some cases it would appear that the expenditure on account of non-workmen is *prima facie* on an excessive scale. In the United States of America 521,532,000 dollars were spent on the salaries and wages of employees and 309,106,000 dollars on the salaries of officers in banks in 1946, giving a ratio of 1 : .59.[9]

203. This year for the first time banks have been showing in their balance-sheets, under section 29 of the Banking Companies Act, 1949, the salaries and allowances paid to their managing directors or managers. Some of these figures are high, but whether they are on a scale disproportionate to the resources of the companies concerned, according to the normal standards prevailing in banking business, would be a matter for the Reserve Bank to decide under section 10 of the said Act.

204. It has been contended that a bank's managing director or manager must have very high capabilities or qualifications, for which it must be prepared to pay adequately, and that a few thousands spent on the proper type of a managing director or manager are often justified by the resulting efficiency, increased business and enhanced profits. There is a good deal of force in this argument, but it seems to us fairly obvious that there must be some reasonable proportion between what is spent on the managerial staff as a whole and the resources of a bank. On this point we have found a surprising lack of uniformity or similarity in the ratios of the total amounts spent by way of salaries, dearness and other allowances on the managerial staff and the gross earnings of different banks. In the cases examined by us we have found such ratio to vary from 8.7% to 20%. This, again, appears to us to indicate forcibly that in certain banks the administration can really be called top-heavy.

205. The scales of pay and allowances laid down by us may appear to be too liberal when compared with the scales prevailing in the banks under the previous awards or otherwise. It has, however, to be remembered that these scales have been based on the cost of living in 1944, that at the lowest levels they are based on actual data as to expenditure, etc., which were not fully available to the previous adjudicators and that even at those levels we have not allowed full neutralization of the increase in the cost of living. Some of the previous awards have given a house rent allowance, which is now, on the whole, incorporated in the pay scales; and the fact that the Bombay award has been terminated under the Bombay Industrial Relations Act by large sections of the employees and that several banks have been constrained to raise the rate of dearness allowances granted by the said award would show its inadequacy.

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9. Annual Report of the Federal Deposit Insurance Corporation for 1946.

206. We do not think that in any of the banks in class A the scales of pay and dearness allowance that we have laid down would be found (particularly if reasonable economy is practised at the top) to be disproportionately onerous. The initial amounts in the pay scales may be found to be higher than what are being paid at present, but it has to be remembered, besides such considerations as have been mentioned above, that the dearness allowance payable owing to the rise in the cost of living since 1944 would be comparatively small.

207. Some of the class B banks may be faced with a comparatively large increase on their present wage bills, but some of them also appear to be spending too large a portion of their gross earning on their managerial staff; and we believe that we are justified in requiring them to provide a little more than bare sustenances for their employees, for they should have better capacity than the class C bank which are called upon merely to satisfy the subsistence needs of their workmen.

208. As to the class C banks, some of them may have to face greater difficulties. But in such an event that would, in our opinion, as already stated, be an indication that a bank has been working uneconomically or in an inefficient manner; and the bank should either set its house in order or close down; or it may have to seek salvation in amalgamation with other banks. It is, however, obvious that no unit of any industry should be permitted to employ workmen on a scale of remuneration which is insufficient to meet their bare human needs. It is those needs which have been borne by us in mind in framing the scales of pay for the class C banks.

209. It has been a matter of regret for us that the small banks, particularly the non-scheduled banks, have not come forward to assist us in our inquiries in the spirit which was expected of them, most of them not being represented and many not supplying the information which we required all the banks concerned to furnish to us. Attempts made from time to time to persuade them to inform us of their financial position and difficulties have borne little fruit and a majority of them have remained unresponsive throughout the proceedings. Such of the small banks as have appeared before us have pleaded for special concessions on the ground that otherwise they would be wiped out of existence. We deal with their representations in the next section.

SECTION IV

Small Banks

210. Certain small banks have made representations regarding the difficulties which they labour under and which they have of late been experiencing in an acute form. Those difficulties may generally be summarised as follows:

(1) The average percentage of all expenses to gross earnings of 15 small banks in 1948 was 83.1 per cent as against 59.7 per cent for certain banks of class A and 77.4 per cent for certain banks of class B. In individual cases the percentage in the case of some small banks was as high as 92 or 93 per cent in 1949, leaving little margin for net profit. The percentage of salaries or wages, allowances and interest paid to gross earnings has steadily risen since 1946, swallowing up nearly the whole of gross profit, and few small banks are paying dividends.

(2) The requirements of section 17 of the Banking Companies Act, 1949 regarding a reserve fund will now operate to reduce net profits still further.

(3) The fall in deposits in the case of small banks has been proportionately higher than in the case of bigger banks.

(4) The administration of such banks is not top-heay and there is no scope for economy on that account.

(5) Most branches of such banks are situated in areas not covered by the bigger banks and they, therefore, play a special and useful role of which they should not be deprived.

(6) Such banks are already paying salaries, wages and allowances up to the limit of their capacity and they are incapable of paying more.

211. The main suggestions made by them are as follows :

(1) At least the employees of small banks or branches thereof situated at places with populations of 50,000 or less should be excluded from our award.

(2) Similarly, branches having not more than 10 employees should be so excluded.

(3) Small banks should be exempted from such directions as to welfare items like medical aid and expenses, payment of income-tax as the Tribunal may give.

(4) The scales of pay, allowances, etc., should be fixed with reference to their capacity to pay.

We have provided that a bank of class C need not pay more than such remuneration as is sufficient to meet their employees' needs of bare sustenance, and we have done our best to ascertain on what scale such remuneration should be fixed. In such cases it is not possible for us to fix a lower scale. We have, however, thought it proper to give certain concessions to this class of banks, as follows :

(*a*) We have provided that in the case of branches with not more than eight employees and situated at a place of which population does not exceed 25,000 the scales laid down may be reduced by 8 1/3 per cent in the case of such employees as are permanent inhabitants of the place with residences of their own.

(*b*) We have provided that banks of class C need provide medical aid and expenses for their employees only on a restricted scale as compared with the bigger banks.

(*c*) We have not laid down any special allowances for such banks.

(*d*) We have not only not given any retrospective effect to our award in the case of such banks but have laid down that our directions as to pay and dearness allowance shall become operative with effect from six months after the publication of our award.

212. In our opinion these concessions are all that it is reasonably possible for us to give in the case of the small banks. We have already referred to the annual report of the Reserve Bank of India on Currency and Finance for the year 1945-46 with reference to the indiscriminate expansion of branches during the period in which boom conditions prevailed. This phase of expansion of banks seems, for the time being, to have come to an end, giving way to the phase of consolidation, and in such circumstances the closing down of certain banks and branches, in our opinion, has become unavoidable. That would also be the result, we think, of the requirements as to minimum paid-up capital and reserves contained in section 11 of the Banking Companies Act, 1949, particularly those

as to banking companies which have places of business in more than one State. Besides such banks as will be affected in the manner indicated above, there may be some which will find the scales of pay, etc., laid down by us as too onerous or beyond their capacity and which will, therefore, have either to close down, or cut down expenses which are unconnected with pay scales, etc., or seek amalgamation with other or more affluent banks. In the case of several small banks the cost of attracting deposits, *i.e.*, the rate of interest paid, is unreasonably high; in one case we have found it as high as 5 per cent. It may be possible to effect economy in what are shown as "other expenses" in the balance sheets. If certain banks or branches have to be closed, no doubt there will be unemployment for some, but such prospect must be faced in view of the benefits accruing to the vast majority of employees and the need for upholding the principles which are the basis of our recommendations. Even such unemployment as may result is likely to be relieved by the replacement of the old banks or branches by branches opened by banks with larger resources and by the consequences which may be expected from the labours of the Rural Banking Enquiry Committee.

213. We have examined the financial condition of some of the non-scheduled banks which have supplied us with the necessary figures and information. In 9 such banks[10] the percentages of the gross earnings to the working capital vary from 2.3 per cent. to 7.3 per cent and the percentages of the net profits to the working capital vary from 0.11 per cent to 1.94 per cent; and the ratio of the total expenditure on the clerical and subordinate staff to that on the managerial staff also varies greatly, *e.g.*, Rs. 60,875; Rs. 51,596, Rs. 40,946; Rs. 41,574, Rs. 1,47,508; Rs. 48,753 (using the actual figures for the amounts spent). These figures suggest that some of the banks are not being economically run and thus appear to be leading a precarious existence.

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10. Agricultural and Industrial Bank, Union Bank of Bengal, Vijaya Bank, Safe Bank, Orient Bank of India, Maharashtra Apex Bank, Bank of Sirmur, Prabhakara Bank and Gauhati Bank.

9 33

CHAPTER XIV

House Rent and other Allowances

214. We now proceed to deal with the question of house-rent allowance and other allowances like children's allowance and conveyance allowance (items 4 and 5 in Schedule II).

215. Mr. B. B. Singh declined to recommend any house allowance on the ground that rent, as an element in the cost of living, had been taken into consideration in fixing the pay scales and rates of dear food allowance in his award. He, however, recommended a house allowance for peons and chowkidars in big towns like Lucknow, Kanpur, Banaras and Allahabad. There was a demand before Mr. Justice Divatia for free living quarters for the lower paid staff or in the alternative for Rs. 10 per month. After noticing that certain banks had provided quarters for some members of the lower staff or had been paying a housing allowance, he said:

> "In the present state of shortage of housing accommodation in Bombay, it cannot be made compulsory for banks to provide such accommodation. The dearness allowance which they get partly covers the rent paid by the employees. The rents have not gone up after the war on account of the Rent Restriction Act. I am, therefore, unable to grant this demand for accommodation or compensation. Of course, the banks mentioned above which are granting accommodation or paying housing allowance should continue to do so as at present."

216. Before Mr. S. C. Chakravarty the Imperial Bank of India, Indian Staff Association, Calcutta, asked for several allowances including a house allowance. He allowed an increase in the dearness allowance but was unable to grant any of the other demands, on the ground *inter alia* that the demand for a house allowance was for Calcutta only and not for other places included in the Bengal Circle. Mr. S. K. Sen, who adjudicated on a dispute between the branches of the Central Bank of India at Calcutta and their employees, granted a house-rent allowance on a scale somewhat similar to the recommendation of the Central Pay Commission made in paragraph 78 of their Report.

217. We have based scales of pay largely on the results of the enquiry made by Mr. Subramanian. The figures for monthly requirements of different classes of middle class employees of the Central Government given by him in his Report include the amounts required by such employees to be paid as house rent. There are no materials before us to suggest that the average figures given by Mr. Subramanian are inaccurate or misleading; and we see no grounds, therefore, generally speaking for all owing house rent in addition to the scales of pay laid down.

218. But two special circumstances will have to be mentioned which, in our opinion, justify us in granting house rent allowances in the particular cases we are specifying. One of them is the fact that with reference to the employees of the Imperial Bank of India, Bengal Circle, we have in our interim award dated the 2nd December 1949 held that in Calcutta, Delhi and Kanpur some house rent allowance should be granted. Another circumstance is that some time has elapsed between Mr. Subramanian's Report and the present date, and we know

that since 1946 the question of residential accommodation has become more acute in some of the very big cities. Owing to these two considerations, we feel justified in holding, and we direct, that house rent allowance at the rates given below (calculated to the nearest eight annas where necessary) should be granted monthly to the employees of A class banks in the cities of Calcutta, Bombay, Ahmedabad, Delhi and Kanpur.

	Calcutta and Bombay.	Delhi and Ahmedabad.	Kanpur.
	Rs.	Rs.	Rs.
(a) Where pay does not exceed Rs. 100 per month.	8	6	5
(b) Where pay exceeds Rs. 100 but not Rs. 200 per month.	12	10	8
(c) Where pay exceeds Rs. 200 per month	6½ per cent of pay.	5 per cent of pay.	4 per cent of pay.

219. Certain banks are providing free accommodation to some of their employees specially of the subordinate staff, some of the latter being allowed to sleep on the bank's premises. Whether such accommodation is or is not adequate for the workmen's family it must generally be regarded as a concession or amenity voluntarily granted by the bank, and it should, therefore, continue to be provided as before. We think, however, that in such a case if the employee concerned wishes to continue to avail himself of such concession or amenity he should not be entitled to the special house-rent allowance provided for the cities named above. We direct accordingly.

220. We now proceed to consider a large number of demands for other allowances (item 5 in schedule II). The following list includes most of the demands made under this head :

Education or children's allowance ;
Conveyance allowance ;
Halting allowance ;
Washing allowance ;
Hill allowance ;
Fuel allowance ;
Grain allowance ;
Poona Cantonment allowance ;
Officiating allowance ;
Scarcity allowance ;
Border allowance ;
Local allowance ;
Six-monthly accounting allowance.

By "children's allowance" is meant an allowance for the children's education or such an allowance as is given by the Reserve Bank of India as "family allowance" (Rs. 10 per month per child up to a maximum of Rs. 30 per month). An item of "children's education" is included among the "miscellaneous" items of expenditure in Shri Subramanian's calculations, and we need not, therefore, grant any such allowance.

221. By "conveyance allowance" is meant an allowance for journeys to and from the place of work, the clearing house, etc. Mr. Subramanian again, has included "travelling from and to place of work" among the miscellaneous items of expenditure, and the said allowance, therefore, cannot be granted. If an employee has otherwise to incur expenditure by going out on the bank's

work and while he is on duty (the absence not exceeding a day), he is entitled to be reimbursed on account of all such expenditure fairly and legitimately incurred. We direct accordingly.

222. By "halting allowance" is meant the kind of allowance defined in the Reserve Bank of India (Staff) Regulations as a "payment made to an employee in addition to other emoluments for any day during which an employee is absent from headquarters on duty and intended to cover the ordinarily daily expenses incurred by him in consequence of such absence". Mr. S. C. Chakravarty in an award regarding the Imperial Bank of India in West Bengal found the existing rates of Rs. 3-12 for clerks and Rs. 1-8 for the inferior staff adequate, except in respect of Calcutta, Delhi and New Delhi for which he directed "a temporary surcharge of 50 per cent so long as the high cost of living continues." We think that a case has been made out for a halting allowance and we lay down the following scales of daily halting allowances for each day or part thereof amounting to not less than three hours:

		Employees who are not members of the subordinate staff drawing pay within the following limits.										Employees who are members of the subordinate staff.	
		Rs. below 100.		Rs. 100—149.		Rs. 150—199.		Rs. 200—299.		Rs. 300 and over.			
Class of Banks.	In respect of halt in areas.	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.
Class A	Class I	4	8	6	0	7	8	9	0	10	8	2	4
" A	" II	3	8	5	0	6	8	8	0	9	8	2	0
" B	" I												
" A	" III												
" B	" II	3	0	4	8	6	0	7	8	9	0	1	12
" C	" I												
" B	" III												
" C	" II	2	8	4	0	5	8	7	0	8	8	1	8
" C	" III	2	0	3	8	5	0	6	8	8	0	1	4

The figures given for class A banks in class I areas generally correspond to the amounts now being paid by the Central Bank of India.

223. "Washing allowance". This is an allowance claimed in respect of the washing of uniforms or other clothes provided for or worn by members of the subordinate staff while on duty. We direct that unless a bank arranges for the washing or pays the washing charges an allowance of Rs. 3 per month in Class I areas, Rs. 2 per month in Class II areas and Re. 1 per month in Class III areas shall be paid by banks of classes A and B to such members of the subordinate staff as are provided with or required to wear uniforms.

224. "Hill allowance". A special allowance, in view of the higher cost of living at hill stations, has been asked for, at the rate of Rs. 20 per month in respect of Simla, Darjeeling, Mussorrie, Nainital, Shillong and Ootacamund. Such an allowance is being paid at present by certain banks. We direct that

for hill stations with a height above 3,000 feet and up to 5,500 feet above the sea level 8-1/3 per cent of the pay, subject to a minimum of Rs. 6 per month, and for hill stations higher than 5,500 feet above the sea level 12½ per cent of the pay, subject to a minimum of Rs. 10 per month, shall be paid to all employees by way of hill allowance.

225. "Fuel allowance". This is paid by certain banks during the period November to March at certain hill stations. The Imperial Bank of India pays a fuel allowance at the main hill stations at the rate of Rs. 8 per month for clerks and Rs. 4 per month for the subordinate staff. The demand is for Rs. 30 per month. We think that the demand is excessive, although the price of fuel has gone up materially. We direct the payment of a fuel allowance at the same rate as the hill allowance subject to a maximum of Rs. 20 per month for the five months, November to March.

226. "Grain allowance". This used to be given by the Hongkong and Shanghai Banking Corporation and the Chartered Bank of India, Australia and China. It was first abolished after the Divatia award by the latter bank which came under the said award, but it was restored by an order made by Divatia J as it amounted, in his opinion, to an existing amenity. The Hongkong and Shanghai Banking Corporation, however, does not come under the Divatia award and has abolished the allowance. The demand is that it should be restored. We are not inclined to restore it, as all reasonable items of expenditure have been taken account of by us in fixing the scales of pay.

227. "Poona Cantonment allowance". This refers to an allowance which is being given to the employees of the Imperial Bank of India in its branches situated in the Cantonment at Poona, having been introduced in the said branch in 1943 and being equal to the difference between the emoluments at Poona and those at Bombay. The allowance is demanded by the employees working in the city of Poona where it is not being paid. There seems to be no reason why the allowance should be retained for the employees in the Cantonment, whatever might have been the reasons for its introduction in 1943. We have found that the number of vouchers handled in the city branches of the bank exceeds the number of those handled in the Cantonment branch. The authorities of the bank propose to abolish the invidious distinction by doing away with the allowance altogether. We think that it would be a good solution, and in view of this no direction from us on this question is necessary.

228. "Officiating allowance". By this is meant an allowance payable in respect of an employee's officiating in a higher post, *i.e.*, a post carrying a higher salary than his own. There is a rule regarding officiating pay in the Reserve Bank of India (Staff) Regulations, 1948 (regulation 69) and there are similar rules for persons in Government service. The U.P. Bank Employees' Union has asked for 20 per cent of the wages as the officiating allowance, but this demand is not supported by the other unions. Some of the banks have pointed out that officiating or acting in a higher job affords an opportunity to learn work and should be welcomed by the employees. As observed by Mr. M. C. Shah in the award concerning the dispute between the Mill Owners' Association, Bombay, and their employees in occupation "H" in the cotton textile industry, "that may be so, but if a man is considered to be fit enough to act in a higher post for a certain length of time, then it is but proper to pay a certain additional remuneration for doing the duties of that post[1]". We direct that where an employee acts in a higher post for a period longer than

1. 1950 I.C.R. (Bom.), p. 8, at page 35.

15 days he shall be paid an officiating allowance calculated at the rate of 50 per cent of the difference between his own basic pay and that of the person for whom he officiates, or at 20 per cent of his own basic pay, whichever is lower.

229. "Scarcity allowance" is paid by the Bank of Baroda at Port Okha. Dwarka and Hithapur. The demand is that it should be continued. This allowance appears to have been introduced owing to scarcity conditions prevailing at the places named above. They cannot be indefinitely continued, and we do not know whether scarcity conditions still continue to exist at those places. We would leave the matter to the discretion of the Bank authorities and give no directions in the matter.

230. "Border allowance". This is demanded for certain places near the border of Pakistan on account of the risk involved. The Central Pay Commission noted (page 52 of the Report) that in certain localities allowances were granted "to compensate for the hardship incidental to service in certain difficult or remote areas, *e.g.*, the Frontier tracts or places which are declared as non-family stations". We are unable to grant an allowance of this nature. Apart from the difficulty of defining a locality for which a "border allowance" might be appropriate and of regarding members of all communities as equally exposed to the risks involved it seems obvious that if there are real risks at such a station, it would be reflected in the increased cost of living, for which an employee serving there would be entitled to a higher dearness allowance, so that no other compensation would ordinarily be necessary.

231. "Local allowance". It is stated by certain employees of the Punjab National Bank, and it has not been controverted, that such an allowance is paid to Punjabi employees of the bank who are sent out to serve in a place outside the Punjab. If such a practice obtains it should either be abolished or non-Punjabis should be entitled to a similar allowance when serving outside their State. We direct accordingly.

232. "Six monthly accounting allowance". This allowance is demanded in respect of the extra work that has to be put in by bank's employees twice a year for the purpose of the making up of six monthly accounts. It seems to us, in view of the provisions of the Shops and Establishments Acts in the several States (*e.g.*, sections 14 and 63 of the Bombay Shops and Establishments Act, 1948 and section 8 of the U.P. Shops and Commercial Establishment Act, 1947), that on such occasions the employees in question are entitled to earn extra wages for overtime work. No further directions from us, are, therefore, necessary.

Mr. N. Chandrasekhar Aiyar has recorded a Minute of Dissent as regards paragraph 218. It is printed at the end of this award.

538

CHAPTER XV

BONUS

SECTION I

NATURE OF BONUS: AMOUNT

233. The next item in Schedule II is, "Bonus, including the qualifications for eligibility and method of payment." It has now been authoritatively decided that though bonus may not be included in the terms of any contract entered into by an employer and his employees, as soon as a demand for bonus is refused all the elements of a trade dispute arise, and that for this reason it cannot be regarded as an *ex gratia* payment (*The Indian Hume Pipe Co.* v. *Nanavaty*[1]; *In the matter of an application and in the matter of the India Paper Pulp Company, Limited*[2]; *C. Baktavatsalu Nayudu* v. *The Chrome Leather Co., Limited*[3] also *National Association of Local Government Officers* v. *Bolton Corporation*[4]). In the Divatia award it was observed, "It is within the competence of a bank to give a bonus to its shareholders as well as members of the staff, and although such a bonus to the members of the staff may not have any precise and definite relation to the profits, the extent of those payments does depend roughly on the profits made." It has, at the same time, been held by the Industrial Court, Bombay, in more than one award, that one of the justifications for the payment of a bonus is the difference between the actual wage and the living wage. In "The Spirit of Industrial Relations" by H. S. Kirkaldy (Oxford University Press, 1947) the author states (page 101): "Profit-sharing can never be a complete solution to the problems of industrial co-operation because a living wage must always be a first charge upon industry so long as it continues to operate and whether it makes a profit or not." In the award made by the Industrial Court, Bombay on an industrial dispute between the members of Millowners' Association, Bombay and other Cotton Textile Mills in Bombay on the one hand and their employees on the other regarding bonus for the year 1948, the following conclusion was reached: "It may, therefore, be stated that so long as the living wage standard has not been attained the bonus partakes primarily of the character of the satisfaction, often partial and temporary, of the deficiency in the legitimate income of the average worker in an industry, and that once such income has been attained, it would also partake of the character of porfit-sharing. Owing to this dual character of bonus it would be a mistake to regard a demand for bonus as a demand for profit-sharing pure and simple[5]. We agree with this opinion.

234. A large number of demands have been made by the unions for bonus for particular years in respect of particular banks. We have been unable to deal with such individual demands except such matters as were pending in Industrial Tribunals and Courts in the different States at the time of our

1. 48 Bom. I.R. 531.
2. [1949] (I.F.J.R. 119).
3. [1949] (I.F.J.R. 84).
4. (1943) A.C. 166, at page 187.
5. *Bombay Government Gazette*, Extraordinary, Part I-L, May 5, 1949, p. 156.

appointment and have been specifically referred to us under the provisions of section 5 of Ordinance VI of 1949 or Act LIV of 1949. Apart from the great deal of time that we should have to spend on such Questions had we to hear and dispose of every application for a particular year in respect of a particular bank, we believe that the kind of disputes regarding bonus that have been referred to us are disputes of a general nature, *e.g.*, Questions regarding "qualifications for eligibility and method of payment" there being no reference in item 6 in Schedule II to "specific cases" as under item 18 (retrenchment and victimization).

235. The general demands regarding bonus vary from two months to four months' salary and allowances. A number of demands are in terms of the basic salary and some unions have advocated a share in the net profits of every year, varying from 20% to 50%. Several unions have demanded that there should be no such conditions as are usually attached to eligibility for bonus; and some have also asked for a percentage of the Excess Profits Tax when it is returned by Government.

236. Certain adjudicators have attempted to discover a formula for the ascertainment of bonus in all cases, linking it either with the dividend paid or the profits earned by an industrial concern. In an award regarding the textile industry in the Madras Presidency Rao Bahadur M. Venkataramaiya noticed that in the Buckingham and Carnatic Mills the bonus paid was linked to the profits distributed, *e.g.*, if the dividend declared was 12½ per cent the bonus paid was 12½ divided by 100 x 12 or 1½ months' wages. He recommended the adoption of this rule. He saw some danger in such a rule, namely, that out of the profits earned a large portion might be carried forward to the reserve in order to reduce the amount that might be available to the shareholders, thereby lowering the dividend; and he expressed the hope that there would be no deliberate attempt to spite the worker by these methods."

237. In an award concerning the industrial disputes between the employers of thirty-six cotton mills in West Bengal and their workmen, a Tribunal composed of Messrs. A. Das Gupta, S. C. Chakravarty and S. C. Datta Gupta adopted the following formula:

(Bonus of a worker in a year =)

$$\text{Total wages and dearness allowance earned by the worker in the year} \times \frac{\text{dividend declared}}{100} \times \frac{\text{Total number of days worked } \textit{plus} \text{ authorised holidays and leave on full pay}}{\text{number of days in the year}}$$

In another award in West Bengal, namely, in the matter of the industrial dispute between Messrs. Kilburn and Company and Messrs. MacNeill and Company on the one hand and their workmen on the other, Mr. A. Das Gupta observed: "In my opinion, if there is any profit in any year, a reasonable portion should be set apart for reserves and depreciation. By profit, I mean the net profit. Out of the balance, attempt should be made to set apart 6 per cent of the capital employed for return to the investors. If anything is still left, that shall be distributed among the investors and the employees proportionately. The total annual remuneration paid to the workmen as basic wages and dearness allowance shall be considered as the value of the labour employed. Bonus payable to an employee shall be (the net profit in a particular year minus depreciation, reserve, provident fund, and other items of like importance minus 6 per cent of the Capital employed) divided by (the total value of labour in the year plus Capital

employed) multiplied by (the value of labour of the particular employee). If the initial letter stands for the terms referred to above, the bonus payable to an employee may be expressed arithmetically as indicated below—

$$\text{Bonus to an employee} = \frac{\text{Net Profit—(D } \textit{plus} \text{ R } \textit{plus} \text{ P.F. } \textit{plus} \text{ Important items) 6 per cent Capital employed}}{\text{Total value of labour } \textit{plus} \text{ Capital employed.}} \times \text{Value of labour of the particular employee.''}$$

238. Before Mr. Justice Divatia Mr. Shantilal Shah suggested on behalf of the employees the laying down of a rule that if the dividend was 4 to 6 per cent a bonus of one month's salary, if it was from 6 to 10 per cent then two months' bonus and if it was over 10 per cent three months' bonus should be granted. This proposal was opposed by the banks on the ground that it would amount to a proposal for participation in the profits and that under section 277 RH of the Indian Companies Act, a bonus in the form of such participation in the profits would not be legal. Mr. Justice Divatia said, "that is quite correct. At the same time it is within the competence of a bank to give a bonus to its shareholders as well as members of the staff, and although such a bonus to the members of the staff may not have any precise and definite relation to the profits, the extent of those payments does depend roughly on the profits made. The demand of the employees for laying down a general principal concerning all bonuses in future cannot, therefore, be granted and at my suggestion the employees agreed to limit their demand for bonus for the past accounting year of the bank which in most of the banks is January to December 1946".

239. We have now in the Banking Companies Act, 1949, the following provision: "No banking company.....shall employ any person.....whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company." [(Section 10 (1) (*b*) (*ii*)).] We do not think that it is necessary for us to consider specifically the question whether any of the three formulæ set out above would be legal or not in view of this provision in the said Act, because we do not propose to lay down any formula making bonus a share in the profits. We have taken the view that the receipt of a bonus is not simply or necessarily a matter of profit-sharing. It also seems to us that a company has sometimes to declare a particular dividend owing to considerations not strictly related to the profit alone; for instance, a sudden declaration that no dividend can be paid may have serious consequences on the credit of such a delicate organization as a bank; or for certain reasons the shareholders' hopes might have been pitched high (*e.g.*, by a return of the Excess Profit Tax or some other windfall) which it may not be expedient to disappoint; or it may be necessary to set aside a substantial part of large profits made in the year, in the form of a reserve, for particular purposes. In this connexion the following remarks made by Mr. R. S. Sayers in his "Modern Banking" (Edition 1941) regarding the Bank of England's dividends are of interest: "The central bank must, therefore, always demonstrate that it is not incurring losses, even if it has been incurring losses. Accordingly it must never pass a dividend, and there is a strong case against ever reducing the dividend. If proper performance of its functions leads to its incurring losses, either it must cover them out of secret reserves or it must be helped by the Government." It would not, therefore, be proper to hold that dividend is necessarily a function

(to use a mathematical term) of a bank's profits, although ordinarily the rule must be the greater the profits the greater the dividend. We, therefore, are of opinion that if we link bonus to the amount of the dividend that would not necessarily amount to giving an employee a remuneration which "takes the form of a share in the profits of the company". As workers contribute their labour while shareholders contribute a part of the working capital, both should (apart from the provision in the Banking Companies Act under consideration) be entitled to shares in the resulting profit, and from this point of view also, the linking of dividends and bonus does not appear to be illegitimate. It may however, in passing be noted that in the case of banks the major part of the working funds is not the paid-up capital but the deposits and that only a small part of their establishment is concerned with matters of policy and intelligent use of its resources which are primarily responsible for their profits. On the whole, however, it seems to us that a great deal can be said in favour of such a simple formula as that which was suggested by Mr. Shantilal Shah before Mr. Justice Divatia. We direct, accordingly, that bonus shall be paid to the employees on the following scale:

Up to 4 per cent dividend	*Nil*
For every increase of ½ per cent in the dividend over 4 per cent	1/6 month's pay.

This scale will apply to employees who have worked throughout the year authorised holidays and leave on full pay counting as days of work for this purpose. In the case of others the amount indicated above shall be multiplied by the following coefficient: total number of days on which the employee has worked *plus* authorised holidays and leave on full pay divided by total number of working days in the year.

240. As to the question of a percentage of the Excess Profit Tax being paid when it is returned, no real dispute concerning it can be said to have arisen before the receipt of such refund, for the managements' proposed method of dealing with it may leave no scope for a dispute.

SECTION II

Conditions as to receipt of Bonus

241. As to conditions which are usually attached to the receipt of a bonus, the following conditions mentioned in the award by the Industrial Court, Bombay regarding the bonus payable by certain cotton textile mills at Bombay for the year 1948[6] furnish a fair sample:

(1) Employees who have worked for less than 63 working days and more than 20 working days shall be granted a bonus to the extent of 50 per cent and employees who have worked for 20 days or less shall not be paid any bonus.

(2) Any employee who has been dismissed for misconduct in 1948 shall not be entitled to any bonus even if he has worked for more than 20 days.

(3) Bonus shall be calculated on earnings (exclusive of dearness allowance and bonuses paid during the period) from the 1st January to the 31st December 1948.

6. *Bombay Government Gazette*, Extraordinary, Part I-L, May 5, 1949, page 149.

(4) In the case of women who have been on maternity leave during the period referred to, the actual maternity allowance drawn by them shall be included in their earnings for the purpose of calculating the bonus payable.

(5) Bonus as above stated shall be paid to the employees in two instalments by the 31st May 1949 and the 30th June 1949 respectively.

(6) Persons who are eligible for bonus but who are not in service of the mill on the date of the payment shall be paid in one lumpsum by the 30th November 1949. In such cases, claims in writing should be submitted to the Manager of the Mill concerned.

Conditions (1) and (2) above are objected to by the employees. As to the first, it is contended that a bonus is earned by past work, that it is not a reward and that if the object of inserting a clause about a qualifying period of work be to discourage absenteeism, such an object cannot be achieved by this method: the Textile Labour Enquiry Committee, Bombay have stated at page 364 of their Report, Vol. II, that proper conditions of work in the factory, adequate wages, protection from accident and sickness and facilities for obtaining leave for rest and recuperation constitute the most effective means of reducing absenteeism. We think that there is much force in these arguments; and we may also note that neither in the award made by Messrs. A Das Gupta, S. C. Chakravarty and S. C. Datta Gupta, nor in the one by Mr. A. Das Gupta (referred to in section I) has any such condition been imposed. In the former of the two awards it is expressly stated that no maximum or minimum limits to the bonus are prescribed. We think that it is unnecessary to prescribe any qualifying period of service for the purpose of eligibility to a bonus.

242. As to the second condition, it is pointed out on behalf of the employees that one who is dismissed for misconduct must be regarded as sufficiently punished by the dismissal, and it is contended that he should not again be penalised by forfeiture of the bonus, which may, besides, be in respect of a period within which the misconduct did not take place. Such a contention was upheld in an award made by Mr. P. S. Bakhale, Industrial Tribunal, Bombay (*The Eastern Chemical Company (India), Bombay* v. *its workmen*[7]). It is also doubtful how far such a provision actually serves as a deterrent against misconduct, when the prospect of dismissal does not serve as such. There is no doubt, however, that if an employee has defrauded his bank or caused it damage or loss, any claims which the bank can legitimately have against him should be set of against any claims (including a claim to a bonus) which he may have against the bank. We think that the conditions as to forfeiture of the bonus on account of dismissal for misconduct is a remnant from the days when a bonus was regarded as a sort of reward or *ex gratia* payment, and, therefore, subject to what we have said above, we are not in favour of its retention.

243. We lay down the following conditions:—

(1) Bonus shall be calculated on the pay earned, *i.e.*, on the arggegate of (*a*) the basic pay, (*b*) special allowance, if any (Chapter XI), and (*c*) officiating allowance, if any (see Chapter XIV), earned during the official year of the bank. A "month's pay" in the formula given in Section I will thus mean one-twelfth of such aggregate.

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7. *Bombay Government Gazette*, Extraordinary, 25th September 1948, page 4332.

(2) Bonus may be paid in one or two instalments in a year, and the total amount due shall be paid (subject to the next condition) within two months from the date on which the dividend is declared.

(3) Persons who are eligible for bonus but who are not in the service of the bank shall be paid on their claims being submitted in writing to the bank, within two months of the declaration of the dividend or of the date of the application, whichever is later, provided that no such person shall be entitled to a bonus which has not been claimed for a year after the declaration of the dividend.

244. We have noticed that when a bonus is declared it is drawn by all employees, from the highest officer to the lowest menial, except perhaps a few temporary or casual employees and new entrants. The effect of this practice is that whereas an average employee gets a modest amount, the highest officers, by virtue of their comparatively high rates of pay, get proportionately large sums by way of bonus. If our conclusion be correct that in the present circumstances of industrial development in this country bonus primarily represents an approximation towards the living wage and is only secondarily incidental to the accrual of profits, then the present practice does not appear to us to be wholly justified. We think that the better practice would be for the higher paid officers (say, those who draw over Rs. 1,500 per month as pay) to get bonus at one quarter of the rate, and for officers getting between Rs. 750 and Rs. 1,500 per month as pay at one-half of the rate, to which an ordinary workman would be entitled. We, however, give no directions in this matter but recommend our conclusions to the directors of the banks for their consideration.

544

CHAPTER XVI

Provident Fund

245. The next subject for our consideration is, "Prividend fund, including the rate of contribution and the rate of interest (item 7 in Schedule II). The principal demands are as follows:

(a) the percentage of salary that may be contributed (the bank's contribution being equal should be increased to 8 1/3, 9 3/8, 10 or 12½ per cent: at present it is generally 5 per cent;

(b) the rate of interest to be earned by the fund should be 5 per cent: it is less now;

(c) there should be adequate (50 per cent) representation of the employees on the Board of Trustees;

(d) an employee leaving the bank at any time should be entitled to get the full amount at his credit including the bank's contribution; or at least 50 per cent of the bank's contribution with interest after 2 years' service and the full contribution after 5 years' service;

(e) employees should be entitled to take loans from or against the fund without interest or at low rates of interest;

(f) where no provident fund exists one should be introduced, those who have suffered owing to its non-existence being adequately compensated.

246. As to the Provident Funds which exist (they exist in most of the bigger banks), Mr. Justice Divatia noticed the following difficulty: "The Provident Fund in each bank is one common fund for all its employees in the Head Office as well as in its branches, and it is vested in certain trustees under a trust which is not revocable save with the consent of all the beneficiaries, *i.e.*, all employees including officers. That is in accordance with the provision of section 58 C (*i*) (*e*) of the Indian Income-tax Act. In the case of Exchange Banks the beneficiaries are scattered in different places, throughout the world. Even in the case of other banks with Head Office or branches outside the Province of Bombay all the beneficiaries are not before me. I cannot, therefore, make any award which would be binding on those who have to administer the Provident Funds. All that I can do is to express my opinion and make recommendations". Mr. B. B. Singh recommended the following scheme of Provident Fund:

'A' Class Banks: 9 3/8 per cent contribution on each side with 4 per cent interest.

'B' Class Banks: 8½ per cent contribution on each side with 4 per cent interest.

'C' Class Banks: 6 1/3 per cent contribution on each side with 4 per cent interest.

The difficulty noticed by Mr. Justice Divatia does not appear to have been brought to his notice. Mr. S. K. Sen, in dealing with the dispute between the Central Bank of India Ltd., and its employees in its Calcutta branches took the same view as Divatia J and held that he had no power to interfere with the Provident Fund as it existed in the said bank.

245

247. The following provisions of the Indian Income-tax Act are relevant :

Proviso to explanation 2 to Section 7 (1): "Nothing herein contained shall render liable to income-tax any payment..... from a recognised provident fund within the meaning of Chapter IX-A if such payment is exempted from payment of income-tax under the provisions of Chapter IX-A".

Section 58-B (1) : "The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58-C, and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions".

Section 58-C (1) : "In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below.....

(c) "Subject to the provisions of section 58-D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employees in that year"

(e) "The fund shall be vested in two or more trustees..under a trust which shall not be revocable save with the consent of all the beneficiaries".

Section 58-F (1): "An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year or six thousand rupees, whichever is less".

248. These provisions clearly indicate the importance of having the provident fund recognised by the Commissioner of Income-tax and the difficulty for this Tribunal in interfering with the provisions of a scheme under which a provident fund has been vested in trustees. We have looked at several such schemes and the rules made thereunder. Some of the employees and their advocates suggested that the trustees in such cases should be made parties to the proceedings; but we did not consider this course advisable or expedient. As regards the rate of interest which the provident fund should earn the following provisions from section 282-B of the Indian Companies Act are relevant :

"(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the commencement of the Indian Companies (Amendment) Act, 1936, shall be either deposited in a Post Office Savings Bank Account or invested in securities mentioned or referred to in clauses (a) to (c) of section 20 of the Indian Trusts Act, 1882, and all moneys belonging to such fund at the commencement of the said Act which are not so deposited or invested shall be so deposited or invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such moneys.

"Provided that where one-tenth part of the whole amount of the moneys belonging to such fund exceeds the maximum amount which may be deposited in a Post Office Savings Bank account under the rules regulating such deposits for the time being in force, the amount of such excess may be kept or deposited in a special account to be opened for the purpose in a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (II of 1934).

546

"(3) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (2) applies or in any contract between a company and its employees, no employee shall be entitled to receive in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (2) interest at a rate exceeding the rate of interest yielded by such investment."

These provisions show that the demand that the rate of interest should be 5 per cent is unreasonable. The Imperial Bank of India formerly used to pay interest at 5 per cent per annum; but since 1933 it has been obliged, by the general lowering of the rate of interest, to reduce this rate.

249. A set of Model Provident Fund Rules[1] for industrial employees were prepared by the Government of India and submitted for discussion at the Fifth Labour Conference held in 1943 and after further discussion in the Fourth Meeting of the Standing Labour Committee in January 1949 they were circulated to the Provinces, Employers and Employee's Associations for information. These rules appear to us to be carefully drawn up and deserve the earnest consideration of all employers. We direct that where no provident fund has been instituted one in accordance with the said Model Rules shall be instituted within six months of the publication of the award. Where a Provident Fund already exists we recommend that in case any provision in the Model Rules is more liberal than the corresponding existing provision, the latter should be amended to bring it in conformity with the former. If, however, a sufficient number of employees of a bank are not satisfied that the rules have been sufficiently approximated to the Model Rules they should, in our opinion, be entitled to ask that a new Provident Fund on the lines of the Model Rules should be instituted, insisting, if they so desire, that the maximum limit of the amount of subscription shall be any percentage not exceeding 8 1/3 per cent (see rule 6 of the Model Rules). We direct that in such an event, if a written application to such effect, signed by at least 50 per cent, of the workmen at the head office of any bank, (such office being taken to mean, in the case of the Exchange Banks, the branch where the head of the staff in India usually works) be received within six months of the publication of this award,

(*a*) such a separate Provident Fund (subject to the amendment indicated, if any) shall be instituted by the bank within four months thereof, and

(*b*) any employee shall have the option of remaining a member of the old Provident Fund or joining the new Fund, the option being exercised within two months after the institution of the new Fund. We trust that the Trustees of the present Funds will be able to assure those who wish to join the new Fund that they will be freed from their liabilities in respect of the old Fund but will retain the rights and benefits which have accrued and which may accrue from the old Fund, and that such employees will not incur any penalty or liability for having stopped their subscriptions to the said Fund.

250. We have felt obliged to give the above directions mainly on account of certain provisions in some of the existing schemes which appear to us unnecessarily illiberal. For instance, hardly any of the Funds has a Board of Trustees in which the employees are represented. In the Model Rules, on the other hand, it is provided: "The Fund shall be administered by a Board of Trustees formed with an equal number of representatives by the employer and the subscribers".

1. See Appendix VI.

In certain schemes an employee has merely the option of becoming a member or subscriber. In the Model Rules all non-pensionable employees with emoluments of not less than Rs. 25 per month (subject to a certain qualification about the number of days they have worked) are required to subscribe to the fund; other non-pensionable employees (with a similar qualification) may be permitted to do so. In several banks (*e.g.*, the Bank of Baroda, Ltd.) it is provided that no member shall ordinarily be entitled to receive payment of any part of the bank's contribution until he shall have served for a period of 15 years or attained the age of 55 years. Such a provision compares unfavourably with the provision regarding "deductions" in the Model Rules, or with the recommendation made in this behalf by Mr. Justice Divatia in his award (a recommendation which does not appear to have been acted upon by any bank).

548

CHAPTER XVII

GRATUITY

251. The subject arising next for our consideration is " Gratuity, including whether it should be compulsory or *ex-gratia* ", (item 8 of Schedule II.)

252. Before we enter upon a discussion of this subject, we might first deal with a question which has sometimes been raised in connection with retirement benefits, namely, whether more than one retirement benefits are desirable. A West Bengal Tribunal which adjudicated upon the disputes in the Engineering Industry in that State in 1948 came to the conclusion that the workmen should be entitled to claim only one kind of retiring benefit. In the State of Bombay, on the other hand, most of the awards include both a provident fund and a gratuity. Divatia J allowed a gratuity even though the banks concerned had provident fund schemes ; and Mr. B. B. Singh also acted likewise in his award. In actual practice we find that certain banks give two, three or even more retiring benefits, *e.g.*, provident fund, gratuity, pension, compassionate allowance, " retiring allowance ", and " retiring fund ", a provident fund scheme existing in nearly all the banks and gratuity being also provided for in a large number of banks. In Government service most of the employees become entitled to pension and most of them are entitled to contribute to provident funds (without contribution from Government) also. The Central Government have recently sanctioned a new scheme of retirement benefits, embracing a pension, a gratuity and a family pension, with facilities for partial commutation of the pension. There would, therefore, appear to be no inherent impropriety in more than one retirement benefits existing side by side. At the same time it is eminently desirable that where banks of equal or similar capacities and resources are concerned the burden placed on them, including the burdens already being borne by them, should not be patently dissimilar. The National City Bank of New York, Bombay Branch, has brought to our notice that although it gives its employees only one retirement benefit, namely, a provident fund, it pays much higher salaries than those generally prevailing elsewhere (Rs. 88 per month being the lowest and Rs. 410 the highest) and dearness allowance at 50 per cent of the basic salary with a minimum of Rs. 50 per month ; it also contributes 10 per cent of the basic salary to the provident fund. In view of this it asks that it should not be required to make any provision for gratuity or pension in addition, or that the quantum of any additional retirement benefit held payable should be reduced by the extent an employee of the bank enjoys advantages over and above the scales of pay, dearness allowances, etc., laid down in this award.

253. We are to consider only three kinds of retirement benefits, namely, provident fund, gratuity and pension. It is an elementary principle that an employee who has served an institution during the best part of his life should not, on his retirement, have to face the prospect of starvation, indebtedness or dire poverty ; and it should also be accepted that if an employee dies while in service or shortly after his retirement his family should have some provision to fall back upon, at least for a time. In old days many an employee, even in a humble situation, could hope to save something against a rainy day ; but in these days of high cost of living the chances of saving anything substantial are dwindling greatly, if not disappearing, for a great many employees of the lower middle

class. The scales of pay we have laid down for banks of class C, being based on the requirements at the subsistence level, can hardly leave much scope for saving (apart from the contributions to the provident fund) ; the employees concerned may perhaps congratulate themselves if they can keep clear of indebtedness.

254. In our opinion banks having schemes regarding pensions towards which they make contributions need not pay any gratuity to such employees as would be entitled to such a pension. A gratuity, like a pension, is ordinarily a recognition of long and faithful service, and as "affording a means, which the individual worker may be unable to do himself of putting by a little to provide for the days when he will no longer be able to work"[1]. In certain awards a gratuity has also been regarded as some kind of insurance against or compensation for termination by the employer of the services of an employee, and in such cases the minimum qualifying period of service for earning gratuity, when an employee's services are terminated by the employer, has sometimes been fixed at 5 years or less. We do not think that it should be the object or one of the objects of a gratuity to provide a sort of brake on the employer's power to terminate an employee's services. In genuine cases of retrenchment the employees retrenched would often seem to deserve some compensation, and we have considered this question elsewhere in our award. There are, however, other kinds of termination of services, where it may not be desirable to give the employee concerned such compensation. There is no reason why, where only a provident fund exists, an employee should not also be entitled to a gratuity. We are of opinion, and we direct, that except where there is a scheme regarding pension towards which the bank makes contributions and it is possible for an employee to earn a pension under such a scheme, a gratuity should be paid to all employees who are covered by this award on the scales given below, provided that where a scheme of gratuity more favourable to the employees than the one laid down below exists, the benefits of such scheme shall be continued to be enjoyed by the employees concerned :

Banks in Class A.

(1) on the death of an employee while in the service of the bank; one month's pay for each year of service, subject to a maximum of 15 months, to be paid to his heirs, executors, assigns or nominees ;

(2) on an employee becoming physically or mentally disabled to continue further in service, or on termination of service by the bank after 10 years' continuous service : gratuity at the same rate as above ;

(3) on voluntary retirement, or resignation of an employee, after 15 years' continuous service : gratuity at the same rate as above.

Banks in Class B.

Gratuity at the rates set out above, provided that where the expression "15 months" occurs the expression "12 months" should be substituted for it.

Banks in Class C.

Gratuity at the rates specified for banks in class A, provided that where the expression "15 months" occurs the expression "6 months" should be substituted for it.

1. C. Bhaktavatsalu Nayudu *v.* The Chrome Leather Co., Ltd., [1949] (1. F.J.R. 84).

255. The pay, for the purposes of calculating the gratuity, shall be the average of the pay drawn during the 12 months next preceding death, disability, retirement, resignation or termination of services, as the case may be. A bank, of course, will be at liberty to grant gratuity in excess of the scale set out above, in its discretion.

256. There are certain banks in which gratuity is not regularly paid but it is paid only in certain cases regarded as deserving (gratuity being regarded as an *ex-gratia* payment) or only when the profits allow of such payment. To introduce a scheme of gratuity in such a bank may be to put on it a somewhat onerous burden. To work such a scheme properly it should have a gratuity fund built up by annual accumulations for a number of years. One particular year may see the retirement of a large number of employees, *e.g.*, those who joined the bank at its inception or when it had expanded largely during the last war. To have to pay gratuity to such a number of employees in a particular year may put an undue strain on such a bank. We, therefore, direct that where there has been no scheme of regular payment of gratuity in the past, the scheme indicated above shall come into operation two years after the publication of this award, and that in such a case the service of an employee who is in service at the date of such publication shall be counted as one-half of its length for the purposes of calculations of the gratuity payable.

257. It has been usual, at least in the awards made in the State of Bombay to give a direction that gratuity shall not be paid to an employee who has been dismissed for dishonesty or misconduct, or dismissed for gross misconduct such as wilful insubordination or disobedience, causing damage to the company, theft, fraud or dishonesty in connection with the company's business or property, etc. We have not introduced such a clause in connection with the question of bonus. But we think, and we direct, that where an employee has been convicted of a criminal offence, or where his misconduct has involved the bank in loss or damage, the bank should be entitled to forfeit, at their discretion, wholly or in part, the gratuity which would have otherwise been payable to him. Bonus is earned by past work and is generally dependent on the profits made by a company or industry; it is besides, related to the question of the living wage. No such consideration arise in the case of a gratuity, and it is a payment in connection with an employee's needs generally with reference to the future. Besides, in the case of a bonus, in most cases an employee does not leave service after it is paid, and the company generally retains its hold on him in respect of any claims for any loss or damage caused by him. That is not the case when a gratuity has to be paid. At the same time, to give the company an almost entirely discretionary power to forfeit a gratuity on the ground of misconduct might, lead to abuse. We, therefore, further direct that in cases in which a gratuity is intended to be forfeited, wholly or partially, on the ground that an employee's misconduct (which has led to his dismissal) has involved the company in loss or damage in the proceedings held leading to his dismissal the charge shall specifically show (*a*) how such misconduct resulted in loss or damage to the company (*b*) the extent of such loss or damage and (*c*) the action which is proposed to be taken or which may be taken in respect of any gratuity payable; provided that such a charge may also be made after the proceedings leading to his dismissal have terminated and that in such an event there shall be a separate charge in writing on the points mentioned above, which shall be investigated in the manner provided for cases leading to dismissal.

258. A part of item 8 in Schedule II is, "Whether it (gratuity) should be compulsory or *ex-gratia*". The arguments used in support of the proposition that a bonus is not an *ex-gratia* payment apply equally to the case of a gratuity. We would refer in this connection to the following passage from the case of *C. Bhaktavatsalu Nayudu* v. *The Chrome Leather Co., Limited* already referred to.

> "The granting of bonuses, gratuities, pensions and the like to employees is not out of charity. They are given in order to make labour more contended and form part of the remuneration of the workers for their services."

We are, therefore, unable to regard a gratuity as an *ex-gratia* payment.

259. The last part of item 8 in Schedule II is, "does the scheme recommended by Mr. B. B. Singh for the United Provinces in his award need revision?". Mr. Singh's recommendation was, "all employees after completion of 10 years' meritorious and continuous service should, as a matter of right, be entitled to gratuity equivalent to half month's salary for each year of service subject to a maximum of six months' salary, and after a completion of 20 years' meritorious and continuous service a gratuity equivalent to 12 months' average salary of the previous year. Those who get pension under any other scheme will not be eligible for gratuity". The directions that we have given regarding gratuity are different from these directions to some extent and they will now replace Mr. B. B. Singh's recommendations in this behalf.

552

CHAPTER XVIII

Pension Scheme

260. We now take up the next item in Schedule II, "pension, including the question whether any pension scheme should be introduced in banks having Provident Fund/or Gratuity Schemes" (item 9 in Schedule II). Pension schemes now exist in the following banks:

Allahabad Bank, Limited,
Calcutta, National Bank, Limited,
Chartered Bank of India, Australia and China,
Grindlays Bank, Limited,
Imperial Bank of India,
Lloyds Bank, Limited,
Mercantile Bank of India, Limited, and
National Bank of India, Limited.

We do not think it expedient to direct that any bank which has no pension scheme at present should introduce it, although some unions have asked for its introduction in all banks, and the new scheme introduced by the Central Government has several attractive features. The demand for introduction of pension schemes in banks where they do not exist has not been pressed, and no union has attempted to show that a bank which has no such schemes at present is capable of bearing the burden of introducing one. The Government scheme was introduced recently and no party has had any opportunity of scrutinizing or commenting on it. At least one union (Central Bank of India Employees' Association, Madura), is against any pension scheme and another (Indian Bank Employees' Union, Madras) has asked for pension only in case no gratuity is granted. We have already stated that gratuity schemes should be applied where there are no pension schemes with the bank's contributions or where pension cannot be earned; but this proposition should not be construed so as to fetter the discretion of any bank to grant both the benefits should it be inclined to do so.

261. As to the banks where pension schemes exist, the arguments addressed to us by the employees mainly concerned the Imperial Bank of India. It was said that the earning of a pension in the Chartered Bank of India, Australia and China depend upon the discretion of the management and it was contended that this condition should be removed, the pension being made applicable to all. We are, however, not inclined to interfere with a provision of this kind regarding pension, specially as we are not in possession of all the relevant facts. We shall, therefore, consider only the arguments addressed to us regarding the pension scheme obtaining in the Imperial Bank of India.

262. In 1920 the Imperial Bank of India Act (XLVII of 1920) was passed. Prior to that there were three Presidency Banks which had no provident fund but had pension and gratuity funds. In 1921 when a Pension and Guarantee Fund was introduced the bank gave employees in the Bengal Circle an option to choose between gratuity and pension, and they chose the pension. The main demands made with respect to this fund are: (1) that the employees' contributions should stop and the fund should be distributed or merged into the Provident Fund, (2) that a new pension fund to be contributed to by

the bank alone should be started, the pension being a certain percentage (*e.g.*, 50 per cent) of an employee's last pay, and (3) that all services should be pensionable; at present some members of the subordinate staff are not entitled to pension.

263. Sir Jamshedji Kanga, on behalf of the bank, contended that the Tribunal had no jurisdiction over the Pension and Guarantee Fund which was managed by trustees under a trust deed, dated the 23rd November 1921, the said Fund consisting of Rs. 3,50,000 transferred by a resolution of the Central Board of the bank, dated the 12th July 1921 "and also all other moneys" (to quote the trust deed) "which from time to time may be transferred or paid to the said fund by way of donation, contribution, premia or interest or be otherwise received on account of the said fund upon trust to provide and pay such pensions, gratuities or allowances.....as may be duly sanctioned". Reliance was also placed on section 31 (2) (I) of the Imperial Bank of India, Act under which the Central Board (constituted under section 28 of the Act) may make bye-laws regarding "the constitution and management of pension and provident funds for the officers and servants of the bank", such bye-laws or regulations having actually been made. It was further argued that the employees having agreed to abide by the rules regarding pension they could not be interfered with at their instance, for that would be allowing the employees to approbate and reprobate at the same time. Finally, Sir Jamshedji tried to show that the pension fund was incurring a heavy deficit and that the employee's proposals would impose a still heavier burden on it.

264. There is no doubt that ostensibly a valid trust has been created vesting the fund in trustees. Whether the trust is a valid one is a question which we do not propose to go into. In any case, as it has been acted upon for a number of years, we think that we ought to proceed on the footing that a trust exists, and as the Tribunal did not have the Trustees or all the beneficiaries of the Fund before it, it is unable to interfere with the working of the said fund. The pension section of the Employees' Pension and Guarantee Fund is made up of each member's contribution at 5 per cent of his substantive pay [rule 5A (i) of the Fund] and an equal amount contributed by the bank (rule 6); the pension in each case is debited to the member's account in the pension section of the fund until the balance thereof is exhausted and thereafter to the general balance of the pension section of the fund. The main objection to the said section of the fund is that no employee should be required to contribute towards his own pension and that if that is done and an employee is committed to such contribution by being required to sign an agreement when he joins the bank's service, as the present practice is, that does not detract from the undesirable nature of such a levy, miscalled contribution towards his pension. It is really in the nature of compulsory saving, supplemented by the bank's contribution, such as we are familiar with in the case of provident funds, with the exception of this, (1) that instead of a lumpsum a monthly payment during a member's lifetime after his retirement is assured and (2) that even if his own contributions and the bank's equivalent contribution, with interest, are exhausted, the pension continues to be paid. These are two valuable advantages, not to be lightly thrown away or discarded. But what the workmen want is the institution of a new pension scheme which will enable them to get pensions without having to contribute to it, thus enabling them to make greater contributions to the provident fund or make greater savings. We think that there is great deal of substance in this grievance, as a pension, like a gratuity, should not be

dependent on the employee's contribution and as two compulsory levies—in the case of the provident fund and the pension fund—seem undesirable. The bank authorities, too, do not seem to be very happy about the present Fund, and say that it is sustaining a deficit at present and has to be supplemented every year with large sums transferred to it from the profit and loss account. In these circumstances it seems very desirable that the whole Fund should be reconstituted, making the Pension section of it a Pension Fund in the real sense, and including therein not only the balances remaining out of the three old Presidency Bank Pension funds after the death of their beneficiaries but also, if necessary, bigger annual transfers from the profit and loss account than at present. It may be noted, in this connection, that whereas in the first half of 1949, Rs. 1,39,400 was so transferred in 1922-23 and 1923-24 such transfers amounted to Rs. 5,00,000 each year. An attempt may also be made to graft into the new Fund some of the beneficient provisions of the Central Government's new retiring benefits scheme, *e.g.*, a family pension for a limited number of years in the case of employees who die while in service or shortly after retirement, after putting in a certain number of years of qualifying service. Matters like proportionate pension and commutation of a part of the pension should also be borne in mind. Such a new scheme, however, cannot be instituted without actuarial calculations beforehand and without having secured the prior consent of the Trustees of the existing Fund. We recommend that enquiries should be made as early as possible in this behalf and if practicable the old Fund should be replaced by a new Pension Fund on more enlightened lines, such as are indicated above, than obtain at present.

265. Certain classes of employees are at present excluded from the benefits of the Pension Scheme. Such men in the Bombay Circle are: 2 motor drivers, 9 liftmen, 4 durwans, 30 cleaners, 3 watermen, 36 sweepers, 22 godown keepers and 1 telephone operator; figures for the other two Circles are not available. Some of these men have already rendered many years of service, and several of them are considered temporary and some as part-time servants. The bank should consider whether any of them can be admitted to the Pension scheme and act accordingly.

266. With these recommendations we leave the matter to the good sense of the bank. We could have got actuarial calculations to be made as to the possibility of starting a new pension fund on the lines indicated above and could have, if satisfied on this point, directed the contribution to the present Fund to cease and the new Fund to be set up in the near future. For this purpose it would have been desirable to make the Trustees parties to these proceedings; but we think that for the present an opportunity should be given to the banks to see whether any arrangement superior to the present scheme can be arrived at; and we are content to leave the matter, for the present, at that stage. We would also recommend to the other banks where pension schemes exist sympathetic consideration of this question on the lines we have indicated above.

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CHAPTER XIX

GUARANTEE FUNDS, ETC.

SECTION I

GUARANTEE FUND

267. We proceed next to discuss the subject of Gurantee Fund (item 10 in Schedule II) and also the allied question, whether the scheme of security and guarantee introduced by the Punjab National Bank, Ltd., is suitable [item 15 (b) in Schedule II.] The only banks in which guarantee funds exist appear to be the Imperial Bank of India and the Punjab National Bank, Ltd. In the Imperial Bank of India there is a combined Pension and Guarantee Fund, in two sections, (pensions and guarantee), established with the object of "providing pensions to the banks' employees and security to the bank against losses arising from dishonesty on the part of employees required to furnish guarantee for the faithful discharge of their duties to the bank". Contributions are required to be paid by every member of the Fund at 10 annas per cent per annum (which rate may be reduced by the trustees) on the amount of the guarantee (Rs. 5,000 for persons drawing from Rs. 100 to Rs. 500 per month, Rs. 10,000 and Rs. 25,000 for persons drawing higher salaries). Any loss which the bank may sustain by the dishonesty of a guaranteed employee is made good in the following order:

(*i*) From the defaulting employees special security if he has been required by the bank to provide special security.
(*ii*) From the guarantee section of the fund.
(*iii*) From the general balance of the pension section of the fund.

No premia paid for guarantees are repayable, they become the absolute property of the fund.

268. In the Punjab National Bank there is an "Employees' Guarantee Fund". In 1945 the bank took out a "Floater Fidelity Insurance Policy" in two parts, from the National Security Assurance Company, in respect of officers and non-officers, the bank paying the premium. The policy was renewed in 1946 and 1947. During these three years a number of cases of defalcation and misfeasance occurred involving a loss of about 10 lakhs of rupees. The whole amount was recovered from the Assurance Company. Thereafter the Company refused to renew the policies. Therefore on the 27th January 1948 a scheme was devised by the bank under which (1) the security amounts required from the employees who had to provide guarantees were raised (for peons to Rs. 1,000, daftries Rs. 2,500 and clerks Rs. 5,000) and (2) where the security for such large amounts could not be found such employees were required to contribute to a Guarantee Fund, the contributions being annas 4 per month for peons, annas 8 per month for daftries and Re. 1 per month for clerks. The bank contributed like amounts. Trustees were appointed, one of whom was a senior member of the staff. No contributions were refundable. In case there was a loss due to dishonestly, etc., it was to be recovered from the cash security of the person in question and his property and thereafter from the bank's contribution to the Provident Fund of the person in question and, lastly from the Guarantee Fund. In the Reserve Bank of India, however, where there is Guarantee Fund, the workmen get back their contributions, but the bank do not contribute anything to the fund. The employees of the Punjab Nation

Bank wanted such a provision to be inserted and accordingly the bank amended the scheme. The amendment provide that on termination of service or transfer to an appointment where guarantee is not required, if there be any amount to the credit of a person a bonus would be paid and that such bonus would be in the same proportion to the amount standing to the credit of an employee as that which the fund of the group to which the person belongs bears to the aggregate amount standing to the credit of the members of th group in their individual accounts. The bank continues to pay its own contribution to the Fund. There is a further provision that an amount equal to the bonus paid is to be paid to the Punjab National Bank Employees' Association for benevolent purposes in aid of employees, their widows and orphans, etc. That part of the new scheme was objected to by the employees, and in our award dated the 22nd February 1950 (published in the *Gazette of India*, Extraordinary, dated the 23rd March 1950) we recommended an amendment of this provision. Mr. Singh for the bank has suggested that the bank's contribution should be allowed to accumulate as a reserve fund, so that the contribution rates may be reduced in future. Certain banks are anxious to introduce such a scheme, some of them suggesting that there should be no contribution by the bank, on the analogy of the Guarantee Fund in the Reserve Bank of India. It is also said that if such a system be introduced it may be possible to abolish the "treasurer's system", which obtain in many banks today, in a few years' time when the fund has risen to a sufficiently high figure.

269. Employees have made four criticisms of the scheme and its advocacy by the banks (1) that it penalises the large majority of honest and innocent employees for the dishonesty of a few men, (2) that there is no dispute on this question, the employees not wanting such a scheme and no demands having been made in respect of such a fund by any bank, so that the Tribunal has no jurisdiction in the matter; (3) that such a scheme is illegal where (as in some States, if not all) the local Shops and Establishments Act forbids the deduction from an employee's wages of any amount except such as is authorised by such act (see, for instance, section 34 of the Madras Act); and (4) that there are insurance companies which can cover the risks arising from the employees' acts of dishonesty and misfeasance on the requisite premia being paid by the banks.

270. The first point noted above is sought, to be met by the argument that all are benefited by it, as every employee may be involved in matters like frauds owing to the dishonesty of others and all should be equally interested in preventing frauds, etc., in their bank. This is no doubt true to some extent, but on the whole the criticism that honest people are made to give guarantees against the dishonesty of others has a great deal of force, when it is remembered that the large majority of employees consists of honest people. The second contention of the employees, namely, that there is no real dispute on this question, also appears to us to have considerable force; and we, accordingly, refrain from forcing a guarantee scheme upon any bank where no such scheme exists. As to the third contention, which is a legal argument, it is based on provisions in the Shops and Establishment Acts or Shops and Commercial Establishment Acts in force in the different States. Take, for instance, section 34 of the Shops and Establishments Act (XXXVI of 1947) of the Madras State;

> "34 (1) The wages of a person employed shall be paid to him without deductions of any kind except those authorized by or under this Act.
>
> *Explanation*—Every payment made by a person employed to the employer shall, for the purposes of this Act, be deemed to be a deduction from wages.

"(2) Deductions from the wages of a person employed shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:—"

271. Then follows a list of items like fines, deductions for absence from duty, deductions on account of income-tax and a recognised or approved provident fund; but no deduction on account of any Guarantee Fund is mentioned in the said list. In view of such provisions the only argument which certain banks could urge was that the contract regarding payment of the contributions to the fund entered into by the employees must prevail against such provisions. We have grave doubts whether, where such provisions exist, the deduction made as a contribution to such a Fund can be legal.

272. The last argument used by the employees, again, has much substance. Most of the larger banks have not got such a scheme. In Palmer's Company Precedents (Part I, 1938) we find the following observation; "Where the employees of a company or a considerable number of them are required to give security it is not unusual to establish a guarantee fund to which employees and employers both contribute and thus in effect insure each other's interest." It has, however, not been established to our satisfaction that such a scheme is common in the United Kingdom. In any case it is not clear why all employees, and not merely those who handle money or are capable of causing loss to a bank, should be compulsorily made to subscribe to such a Fund. In spite of the Punjab National Bank's experience in the past it has not been established to our satisfaction that no insurance companies would be prepared to give policies to cover the kind of risks contemplated. We find that certain banks, *e.g.*, the Grindlays Bank and the Comilla Banking Corporation, have taken out "Fidelity Guarantee Floater Policies" or "Collective Fidelity Guarantee Agreement Policies" from well-known insurance Companies like the Ocean Accident and Guarantee Corporation, the General Accident Fire and Life Assurance Corporation and Lloyd's London. It is to be remembered that employees working in the cash department of banks are generally each required to give special guarantees for specified sums to the satisfaction of the bank Treasurer or Head Cashier. We, therefore, are of opinion that there is no special merit in Guarantee Funds where they exist and recommend their abolition as early as possible. With this object we direct that no deductions from the pay, wages or allowances of any employee shall be made for the purpose of being paid into any existing Guarantee Fund, and that the banks where such Funds exist shall intimate to the trustees of such funds, as soon as possible, the desirability of either refunding to the employees the amounts standing to the credit out of such funds or adding them to their contributions to the Provident Fund without similar contributions being made by the bank. We further recommend that those whose contributions to any existing guarantee fund will cease under our directions should incur no penalty or liability on that account but should retain any right and benefits which may have accrued to them.

273. The main arguments on which we have reached our present conclusions were not urged before the Tribunal when item 15 (b) in Schedule II was heard at Dehra Dun in January 1950; hence our present conclusions and the directions we have given above should be deemed to apply to the said item also.

558

SECTION II

Cash Deposits, Fidelity Bonds, etc.

274. This is a convenient place for consideration of item 15 (a) in Schedule II, namely, " Cash deposits, fidelity bonds and other securities to be furnished by staff including the question whether failure to furnish such security should operate as a ban on confirmation ". There has been little argument on this item. Certain unions are against all cash deposits and securities altogether, some are in favour of security being taken from the staff working in the cash department alone, which, according to some, should be in the form of fidelity insurance taken out from insurance companies, the premia being paid by the banks. Some unions have urged that the money taken as cash security so far should be ordered to be refunded. One union has suggested that except in the case of dismissals, for which the cash security amount may be forfeited, it should be refunded within a month of the termination of an employee's service. Another union has said that no employee should be required to furnish a cash deposit, fidelity bonds, etc., for his confirmation.

275. In those banks where the " treasurer's system " prevails it undoubtedly reduces the bank's responsibility as to the working of the cash department, for the treasurer or head cashier gives a blanket guarantee for all working under him covering his own risks by taking guarantees, in his turn, from the latter. From the point of the workmen concerned, however, such a system is not to their advantage, for the treasurer's or head cashier's power over them is generally unfettered and hence likely to be abused when such an officer says that a particular workman working under him has forfeited his trust the bank has little option but to discharge him ; and sometimes, it has been alleged, a workman in the cash department who has made himself obnoxious in the eyes of the management is removed on the plea (supported by the treasurer's or head cashier's written statement, given at their suggestion) that the officer in question is unable any longer to repose confidence in him. To the banks also the system is somewhat disadvantageous, *e.g.*, the treasurer or head cashier may introduce his own favourites leading to incompetent work and to resentment by other workmen. It seems to us that the system is a relic from the past and that an effort should be made by all banks to substitute a better and more efficient system. But whether the present system exists or an improved system is introduced, there will always be the need that the risks involved in men being entrusted with the handling of large amounts of cash, and the existence of great opportunities for dishonest practice, should be sufficiently secured against. Apart from Guarantee Funds which we could not approve of, following ways of covering such risks suggest themselves :

(*a*) taking cash deposits in proportion to the risks involved ;

(*b*) making it incumbent on the employees in question to take out fidelity bonds ;

(*c*) the bank taking out fidelity bonds in each case at its own cost, and

(*d*) the bank taking out general or blanket fidelity bonds or policies to cover acts of misfeasance or dishonesty involving losses up to a specified amount. It is difficult for us to lay down an invariable rule to the effect that any of the abovementioned methods is

superior to the others; but it seems to us that all banks should make an effort to see whether policies of the nature mentioned in (d) above can be had, and that in certain cases and situations the methods (a) and (c) can legitimately be resorted to. We desire, however, to lay down two principles which, in our opinion, ought to guide the banks' conduct in this matter :—

(1) a bank should impose as little burden on the employees and take on itself as much of the onus of providing against the risks involved as possible, for the risks are of the organisation as a whole, and in considering the scales of pay, etc., that we have laid down we have not taken into account such burden falling on any of the employees;

(2) as far as possible such burden may be imposed only on the staff working in the cash department and in other positions where facilities for engaging in dishonest practices, likely to involve the bank in loss, exist.

276. Where security is required to be given the rule must, in our opinion, be that failure to furnish the necessary security should ordinarily operate as a bar to confirmation, unless the management otherwise directs. It may, however, be possible to transfer an employee not yet confirmed, who has been required to furnish security, to a post in which no security need be furnished. In such an event, of course, his confirmation, if otherwise warranted, would not be withheld or affected.

560

CHAPTER XX

INSURANCE AGAINST OLD AGE, ETC.

277. We now intend examining the question of insurance against old age, sickness, death or injury from accidents in the course of the discharge of duties (item 11 in Schedule II). Several unions have urged that insurance on such lines should be introduced in all banks, the premia or a portion thereof being paid by them; some have suggested that 45 per cent of the premia should be provided by the banks. One union has mentioned specific sums for which the members of the subordinate staff and the clerical staff should be insured. The provisions of the Workmen's Compensation Act do not apply to workmen working in a bank, owing to the definition of the expression "workman" in section 2 (n) of the said Act, but it has been urged that similar benefits should be conferred on bank employees, seeing that offences like bank robberies and robbery of bank moneys in transit are not rare and involve grave risks to the staff. No such demands have so far been made before the learned adjudicators who have given awards in bank disputes in the past; but somewhat similar demands have been made in certain other disputes referred to adjudication. In a dispute between the Premier Construction Company, Limited[1], and others and their workmen employed at their head offices at Bombay the employer companies in question had a staff insurance scheme by which the employees were enabled to take out insurance policies on their lives on certain concessional terms, the insurance company having given a discount of 25 per cent on the premium inclusive of 16½ per cent borne by the employer companies. This system was directed to be continued. There was a further demand in that case that every employee should be insured against accident, sickness, injury or death while on duty, the premium being payable by the said companies. But this demand was not pressed at the hearing and was rejected. In a dispute between the Tata Oil Mills Company, Limited, Bombay and its workmen[2], one of the demands was that the company should at its cost take out endowment insurance policies covering accident risks to the workmen for sums varying (according to their salaries) from Rs. 2,000 to Rs. 5,000. This demand was made on the ground that the salaries or wages of the employees were too low to admit of any savings and that the provident fund accumulations and the gratuity amounts available were generally too inadequate to provide against old age or premature death.The learned adjudicator Mr. D. G. Kamerkar remarked, "It is difficult to understand on what ground an employer can be made responsible to provide to his employees an endowment assurance policy covering also accident risks. It seems as if the employees are tapping every source possible of pecuniary benefit to themselves and claiming, at the same time, even reduction in the hours of work and increase in the number of holidays" and he rejected the demand. The company in that case had arranged with the New India Assurance Company for a scheme under which all employees of the Company who desired to take out endowment or life policies with the said assurance company would get a rebate of 10 per cent on the premia, a concession continuing even after an employee left the company's service.

1. 1949 I.C.M.R. (Bom.), p. 703.
2. *Bombay Government Gazette*, December 8, 1949, p. 2095.

5861

278. The following observations of the Central Pay Commission may be quoted :—

> "By way of provisions for the family of persons who may happen to die early in service most of the witnesses who replied to our questionnaire have expressed themselves in favour of some form of compulsory insurance or other. A few have argued that insurance should be voluntary and compulsion is not necessary and that an employee who realises the advantage of insurance could easily avail himself of the facilities offered by private insurance companies. A great many have, however, argued that as far as the ministerial and lower grades of the services are concerned, employees do not normally avail themselves of insurance facilities as a measure of family security and leave their families in straitened circumstances. It was claimed by some that this was due to the fact that such personnel are unable to afford the premia and they, therefore, suggested that Government should meet the cost of insurance without requiring any surrender of a portion of the pensionary benefit or a contributory deduction from the employee's salary. For reasons stressed earlier, we cannot accept the further burdening of the exchequer by recommending free insurance of employees. On the other hand a large body of the employees' representatives realised the value of insurance cover and were inclined to accept as a basis for Government according its employees insurance cover a surrender of some portion of the pensionary benefit. Some were also willing to accept contributory insurance which could be financed by insisting on the employee contributing either directly towards premia or indirectly by diversion through payments out of a provident fund and by Government contributing on the basis of a given reduction from the pensionary benefit. The necessity for providing such an insurance cover was specially emphasised in the case of Government employees whose conditions of service expose them to great accidents and risks, *e.g.*, employees in Mines, Workshops, Dockyards and running staff on Railways. In their case the cover provided by the Workmen's Compensation Act was claimed to be inadequate."

We are of opinion that a bank should not be called upon to provide against old age, sickness or death by taking out any insurance policies in the interests of the employees or their families. But we think that employees should be encouraged to take out endowment or life policies and that they should be so encouraged in at least two ways : (*a*) by allowing them to deduct from their contributions to the provident fund the amounts required to be paid as premia and (*b*) by making attempts to secure favourable terms and concessions for their employees from the insurance companies concerned, as was done in the two cases cited above. As to (*b*) no directions from us are required; and as to (*a*) we recommend that where an employee satisfies his bank that he has taken out an insurance policy approved by the bank and has paid a certain amount as the premium, that amount should be allowed to be deducted from the contribution he is required to make to the provident fund in respect of a period of the same duration as the period in respect of which the premium has been paid, and that inspite of such deduction the amount of the bank's contribution to the provident fund should not be affected or reduced.

279. There are, however, some situations involving a certain amount of risk of a bank's employee. Persons working in the cash department run risks when an armed robbery takes place, and similarly persons accompanying cash in transit run the risk of being shot at or seriously injured by desparate characters. The Workmen's Compensation Act does not apply to banks, but the risks referred to above cannot be said to be less serious than any provided against in the said Act. In the case of any injury suffered by an employee in the course of the discharge of his duties, when such injury results in death or total or partial disablement (as defined in the Workmen's Compensation Act), we think that the bank should give compensation at least on the scale provided by the Act. We direct accordingly. Under the said Act workmen whose salaries exceed Rs. 400 per month are excluded from its scope (see the definition of workman in the Act). We, however, direct that employees with such pay (or their dependants) shall also be paid compensation, which shall be calculated proportionately on the basis of the compensation provided for a workman with monthly wages of Rs. 400 per month. (Schedule IV to the Act.) We understand that usually in such cases some compensation is given to the employee concerned or his family. Where compensation as indicated above is paid by a bank, it would be in a position to recover the amount involved, or a part of it, if it takes out some kind of insurance policy appropriate to the circumstances.

563

CHAPTER XXI

Leave Rules

SECTION I

Existing Awards : Principles

280. We propose in this Chapter to deal with the subject of Leave Rules (item 12 in Schedule II). Certain banks have supplied us with copies of their rules relating to leave ; we have found a great deal of diversity in such rules from bank to bank. Various demands have been made regarding leave ; we give below a summary of the majority of them. The demands relate to privilege leave, sick leave, casual leave, special leave, maternity leave, leave preparatory to retirement, recreation leave, quarantine leave and leave of one or two other descriptions.

281. As to privilege leave, one month's or six weeks' leave of this description in a year is demanded, with the right to accumulate it up to 90 days ; one union has demanded that there should be no such restriction. It has generally been contended on behalf of the employees that the grant of such leave should not be contingent on the needs of the administration but should be given whenever demanded as a matter of course. Some unions have suggested the keeping of a leave reserve for this purpose. The demand as to sick leave has generally been for a month every year with full pay and allowances, with the right to accumulate such leave up to 12 or 24 months, the maximum period up to which it can be given at a time being 3 months, according to some unions. It is also contended that the grant of such leave should be independent of other leave, *e.g.*, it should not be debited against the amount of privilege leave available, and that a hakim's or a vaid's certificate as to illness and the need for leave should be accepted by the management. As to casual leave the demands are for 15 days, 20 days or three weeks in a year, one union suggesting that the maximum period for which it may be granted at a time should be six days. Maternity leave for women workers, for three months at a time or six weeks before and six weeks after confinement, has also been demanded.

282. By special leave has generally been meant leave to union officials in order to enable them to attend proceedings of labour courts and tribunals, leave to enable an employee to study for and appear at an examination in banking, law, etc., and such leave as would cover involuntary absence arising out of circumstances other than illness over which an employee has no control, *e.g.*, civil commotion, stoppage of transport owing to a strike where an employee resides at too long a distance.

283. Leave preparatory to retirement for six months or a year has also been asked for. Certain bank employees have also asked for quarantine leave in cases of contagious illness and recreation leave amounting to a month in a year. It has been alleged that "religious leave" is granted in a certain bank only to members professing a certain faith, and it has been contended that such leave should be allowed to other communities also if it be continued in future. Further demands are that the same rules should be applied to the subordinate staff as to the clerical and superior staff ; that leave due should be granted as of right to all employees, but that if it be refused the reason for such refusal

should be conveyed to the applicant; that an employee on leave should get all allowances and the bonus due to him; that casual leave should be allowed to be taken without application or sanction; and that in order to prevent or minimise favouritism all banks should keep a register of leave applications to be entered in the order in which they are received and that they should be dealt with in the same order.

284. The banks, in general, have opposed the granting of more leave than is being granted under the awards or otherwise. They point out that there are too many holidays in this country, as against the existence of only four bank holidays in England, where junior employees as a rule can get only 14 days' leave and senior employees 3 weeks' leave in a year. They have also referred to the provision in regulation 91 of the Reserve Bank of India (Staff) Regulations, 1948 to the effect that special or sick leave may not be availed of if ordinary leave is admissible, and to regulation 77 of the said Regulations: "Leave cannot be claimed as of right. When the exigencies of the service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it, and an employee already on leave may be recalled by that authority when it considers this necessary in the interests of the service". To the same effect is the opinion given by the Chairman of the U.P. Conciliation Board at page 29 of the book printed as the award of the said Board. It is pointed out that the leave allowable under the Shops and Establishments Acts enacted by the different States is appreciably less than the leave now demanded (see, for instance, section 35 of the Bombay Shops and Establishments Act, 1948 and section 13 of the U.P. Shops and Commercial Establishments Act, 1947).

285. Mr. B. B. Singh recommended the following scale of leave in his award regarding the majority of banks in the U. P.:—

	Clerks, cashiers and supervisor staff including Officers.	Menials.
Casual leave	14 days in a year on full pay and allowances.	15 days in a year with full pay and allowances.
Privilege leave	30 days in a year on full pay and allowances which can be accumulated up to a maximum of three months in three years.	6 weeks in two years with right of accumulation up to 12 weeks in four years on full pay and allowances.
Sick leave	30 days in a year on half pay on the production of suitable medical certificate.	30 days in a year on half pay on the production of a suitable medical certificate.

Mr. Singh directed that all privilege leave should become due after 12 months' completed service.

Divatia, J. laid down the following scales of leave:—

Big Banks:

One month's privilege leave in a year with full pay and allowances which could be accumulated up to 3 months in the case of the clerical staff and 2 months in the case of the subordinate staff; ten days' casual leave in a year with full pay and allowances, out of which not more than 4 days could be taken at one time, or 6 days which combined with gazetted holidays; sick leave on half pay for one month for each year's service on a certificate from a registered medical practitioner, subject to a maximum of 12 months in all during the whole service, additional leave being allowable at the bank's discretion, provided that such leave was dependent on privilege leave being available and that in special

case of hardship full pay might be granted for six months during the whole service; leave without pay in cases where no other leave was due, at the discretion of the bank.

Small Banks :

Three weeks' of privilege leave in a year which could be accumulated up to 9 weeks for the clerical staff and 6 weeks for the subordinate staff; sick leave on half pay for 3 weeks in a year, subject to a total period of 9 months during the whole service subject to such leave being allowable on full pay in cases of special hardship for half the said period; other leave on the same scale as applied to the big banks. In the case of female employees in all banks maternity leave for 3 months with full pay was allowed in addition to sick leave.

286. The directions given by Mr. R. Gupta in the case of the Imperial Bank of India, Bengal Circle, were similar to those of the Divatia award regarding big banks.

287. To take two awards from Bombay regarding clerks in institutions other than banks, members of the clerical staff in the Tata Oil Mills,[1] in an award given by Mr. D. G. Kamerkar in November 1949, were allowed 30 days' privilege leave in a year, the limit of accumulation being 3 months, sick leave on full pay and allowances for 7 days for each year of service or on half pay and allowances for 14 days on production of a medical certificate, not more than 91 days on full pay and allowances or 182 days on half pay and allowances being allowed during the entire service. After 6 months' service casual leave for 7 days in a year was allowed. In the Textile Clerks' Award made by Mr. M. C. Shah in October 1948 [2] clerks were allowed privilege leave for one month in a year for every year of completed 12 months' service with full pay and allowances, one month's sick leave in each year subject to a maximum of 12 months in the entire service, and 10 days' casual leave in a year, an employee not being eligible to take more than 4 days' such leave at a time.

288. Some of the observations of the Central Pay Commission appear to us very pertinent and appropriate with reference to the principles relating to leave which were discussed at the hearing. We reproduce below the important of them

> "It cannot be disputed that leave rules, especially those which impose on the State the burden of paying full salary to an employee when he is on leave, should be framed with due regard to his need for rest on the one hand and to the public interest on the other. It stands to reason that two considerations have a material bearing on this need—(i) the employee's age and length of service and (ii) the nature of his work. The older a man grows, the greater will be his need for rest. It may also be said that a person who has loyally served the State for a great many years has a greater claim on the State than one who has served only for a shorter term. The situation is analogous to the calculation of a person's pension in proportion to the length of his service. The principle of varying the period of annual leave according to the length of service is well established in England and applies to the upper as well as to the lower categories of public servants. It also stands to reason that the need for rest and the length of rest needed depend to large extent on the nature of the employee's occupation, the conditions in which he has to work and the burden of

1. *Bombay Government Gazette*, December 8, 1949, p. 2095.
2. 1950 I.C.R. (Bom.), p. 27.

responsibility resting on him. Physical strain, though tiresome at the moment, does not produce the same harmful effects on one's health as mental strain. If the remuneration of public servants can be regulated with due regard to considerations like the above, there is nothing unreasonable in regulating their leave also with due regard to the same considerations. This principle of differentiation is also recognised in England." [1]

"As will be presently seen, we are recommending certain changes calculated to reduce the half pay leave. The case of persons who are obliged to take leave on the ground of illness, however, seems to us to merit special consideration. That is just the time when the employee may be put to considerable expense and it will be a great hardship to place him on reduced pay during that period. It does not seem to us right in principle to insist on his using up his earned leave during his illness. The earned leave is intended for normal rest and recuperation. An illness, which according to the doctor's certificate requires and warrants his remaining on leave for several months must be dealt with in a class by itself." [2]

"A person who had officiated, say for 12 months, in a higher post, found it more advantageous to go on leave at the end of his officiating period than to revert to his substantive post and during the whole period of his leave his salary would be calculated with reference to the pay of his officiating post, though most of his leave had been earned not during the officiating period but much earlier. We are not prepared to encourage this course." [3]

"We think that as a matter of principle, public servants should not merely be encouraged but even compelled to take leave at short intervals so that the public service may have the benefit of their return to duty in renewed health." [4]

"The theory that leave is not a matter of right must like all similar theories be invoked only as the last resort and every endeavour should be made to oblige and even encourage public servants when they wish to avail themselves of leave which they have earned." [5]

SECTION II

Earned Leave, leave on half-pay, etc.

289. The Government of India considered the recommendations of the Central Pay Commission and modified their Revised Leave Rules, 1933 by publishing a new set of leave rules in February 1949. We are of opinion that those new rules, in combination with the rules relating to leave in the Model Standing Orders for the Banking Industry published by the Government of Bombay in October 1948, furnished to us useful models for the formulation of leave rules. On a due consideration of the said rules and of those laid down in the existing awards we give the following directions.

1. Paragraph 142, page 72.
2. Paragraph 144, pages 79 and 80.
3. Paragraph 147, pages 80 and 81.
4. Paragraph 148, page 81.
5. Paragraph 149, page 82.

567

(A) *Permanent Employees and Probationers*

(1) The earned leave admissible to a permanent employee or a probationer shall be the following fractions of the period spent on duty in the cases shown below :

Class of Banks.	Employees not belonging to the subordinate establishment.	Employees in the subordinate establishment		
		1st 10 years of service.	Next 10 years of service.	After 20 years of service.
A	1/11	1/22	1/16	1/11
B	1/15	1/22	1/18	1/15
C	1/18	1/22	1/20	1/18

(2) Such an employee shall cease to earn such leave when the earned leave due amounts to the following number of days in the cases shown below :—

Class of Banks.	Employees not belonging to the subordinate establishment.	Employees in the subordinate establishment		
		1st 10 years of service.	Next 10 years of service.	After 20 years of service.
A	90	60	75	90
B	80	50	60	80
C	60	45	52	60

(3) The following number of days of leave on half pay shall be earned by each such employee for each completed year of service in the cases shown below. Such leave shall be available on private affairs as well as on the ground of illness :—

Class of Banks.	Employees not belonging to the subordinate establishment.	Employees in the subordinate establishment		
		1st 10 years of service.	Next 10 years of service.	After 20 years of service.
A	18	12	15	18
B	15	10	12	15
C	12	7	10	12

(4) Such an employee shall have the option of having the half pay leave due converted into half the amount of full pay leave, the latter being termed "commuted leave". It will be granted only on the ground of illness, subject to the following limits during the entire service :—

Class of banks.	Employees not belonging to the subordinate establishment.	Employees in the subordinate establishment.
	Days.	*Days.*
A	180	160
B	160	140
C	140	120

(5) Leave not due may be granted on the ground of private affairs as well as of illness, such leave being limited to 180 days in the case of class A banks, 160 days in the case of class B banks and 150 days in the case of class C banks, during the entire service. Leave not due shall be debited against the half pay leave which the employee earns subsequently. Leave not due may be granted only if the sanctioning authority is satisfied that there is a reasonable prospect of the employee returning to duty on the expiry of the leave and earning an equal amount of half pay leave thereafter.

(6) A female employee shall be entitled to maternity leave not exceeding three months at a time for purposes of confinement and recuperation thereafter, such leave being in addition to earned leave and leave on half pay.

(B) *Temporary employees*

(7) On completion of one year's continuous service an employee who is temporary shall be eligible for the leave terms laid down for permanent employees and probationers except that he will not be eligible for any leave not due. The provisions relating to earned leave shall not have any retrospective effect, *i.e.*, he shall begin earning leave at the rate mentioned in paragraph (1) only from the date on which the second year of his service commences. He shall, however, be eligible for half pay leave in respect of the first year of his service at the rate mentioned in paragraph (3).

(8) In respect of the first year of his service the earned leave admissible to a temporary employee will be—

(*a*) to an employee not belonging to the subordinate establishment—one-twenty-second of the period spent on duty;

(*b*) to an employee in the subordinate establishment—one-thirtieth of the period spent on duty.

Explanation.—The term "first ten years of service" "next ten years of service" "twenty years of service", "completed year of service" or "one year's continuous service" used in the foregoing paragraphs means continuous service in the same bank of the specified duration and includes periods spent on duty as well as on leave.

SECTION III

Leave Salary

(9) An employee on earned leave shall be entitled to leave salary equal to the greater of the amounts specified below:—

(*a*) the pay and dearness allowance payable on the day before the leave commences, or

(*b*) (1) in respect of the first 45 days of the earned leave, the average monthly pay and dearness allowance earned during the 12 complete months preceding the month in which the leave commences, and

(2) thereafter the average monthly pay and dearness allowances earned during the 36 complete months preceding the month in which the leave commences.

(10) An employee on half pay leave or on leave not due shall be entitled to leave salary and allowances equal to half the pay and dearness allowance or half the amount specified in clause (2) of paragraph (9) (*b*), whichever is greater.

(11) An employee on commuted leave shall be entitled to leave salary equal to twice the amount admissible under paragraph (10).

(12) A female employee on maternity leave shall be entitled to pay and allowances on the scale provided in paragraph (9).

SECTION IV

Casual Leave

(13) Every employee shall be entitled to casual leave up to the number of days in a year shown in the table set out below :—

Class of banks.	Employees not belonging to the subordinate establishment.	Employees in the subordinate establishment.
	Days.	*Days.*
A	15	12
B	12	10
C	10	8

(14) Casual leave shall be non-cumulative and no leave of any other kind shall be allowed to be combined with such leave. Not more than four days' casual leave shall be granted at one time, to be extended to eight days in most exceptional circumstances. Sundays or other holidays which precede or follow a period of casual leave may be prefixed or affixed to such leave.

(15) Ordinarily, the previous permission of the sanctioning authority shall be obtained by an employee before taking such leave. When this is not possible, the said authority shall, as soon as may be practicable, be informed in writing or orally or through any person of the employee's absence from work and of the probable duration of such absence.

(16) In respect of any period spent on casual leave an employee shall be entitled to pay and allowances as if he was on duty.

SECTION V

Procedure, etc., as to other kinds of Leave

(17) (1) An employee who desires to obtain leave of absence other than casual leave shall apply in writing to the sanctioning authority. Such application for leave shall be made not less than one month before the date from which the leave is to commence, except in urgent cases or unforeseen circumstances including sickness when it is not possible to do so. The sanctioning authority shall issue orders on such application as soon as practicable, and in cases of an urgent nature immediately. If the leave asked for is granted, an order showing the date of commencement of the leave and date on which the employee will have to resume duty shall be issued to the employee.

(2) If leave is refused or postponed, the reason for the refusal or postponement as the case may be, shall be mentioned in the order, and a copy of the order given to the applicant.

(3) No leave or extension of leave shall be deemed to have been granted unless an order to that effect is passed.

(18) If an employee after proceeding on leave desires an extension thereof, he shall make an application in writing to the Manager or other officer appointed for the purpose. Such application shall state the full address of the employee and shall be made in sufficient time to enable a reply to be given to him before the expiry of the leave desired to be extended. A written reply either of the grant or refusal of extension shall be sent to the employee at the address given by him as early as possible.

(19) Unless he is permitted to do so by the authority which granted his leave, an employee on leave may not return to duty more than fourteen days before the expiry of the period of leave granted to him.

SECTION VI

Miscellaneous

(20) The granting of leave other than sickness and maternity leave shall be subject to the exigencies of the bank's business. The bank may notify in advance to any employee, by circular or personally, the periods when or within which privilege leave will be granted.

(21) Leave without pay may at the discretion of the bank in special circumstances be granted to an employee when no other leave of any kind is due.

(22) All holidays, including the weekly holidays falling within the period of any kind of leave, shall be treated as leave.

(23) The bank may require an employee applying for sickness leave or maternity leave to produce a medical certificate in support of his or her application from a registered medical practitioner, Government medical officer or a registered vaid or hakim and may require the applicant to be examined by a medical officer appointed for the purpose at the expenses of the bank.

(24) An employee shall be entitled to retain to his credit any leave that may be due to him under any existing rules applying to him in any bank on the date on which this award comes into operation. Such leave shall be added to his leave account to any leave he may earn after such date.

(25) Leave at the credit of an employee shall lapse on the date of his retirement, provided that if in sufficient time before that date he has—

(1) formally applied for leave and been refused it, or

(2) ascertained in writing from the sanctioning authority that leave if applied for would not be granted, in either case the ground for refusal being the exigencies of the administration, then the employee may be granted, after the date of retirement, the amount of leave so refused subject to a maximum of three months.

571

SECTION VII

Other Demands

290. Certain employees' unions have asked for "quarantine leave" in cases of contagious illness and for recreation leave amounting to a month in a year. We do not think that any separate provision for either kind of leave is necessary.

291. As to the "religious leave" alleged to be given to employees belonging to a particular religious persuasion, presumably for the purposes of religious pilgrimage, we direct that no bank shall observe any discrimination between members of different communities in the matter of granting leave.

292. Leave concessions having been demanded for officials of unions with the object of enabling them to attend proceedings of labour courts and tribunals. This Tribunal has found it necessary to direct that the absence from duty of such representatives of banks' employees as have had to attend our proceedings should be treated as if the period of such absence was spent on duty. We think it unnecessary to give any direction on this question, for the court or tribunal concerned would ordinarily be able (except perhaps where a dispute arises between workmen and workmen) to give similar directions in such proceedings.

293. Similarly as regards demands for leave, to enable an employee to study for and appear at an examination in banking, law, etc., such demands have not been strongly pressed and we think it best not to give any directions. If a bank thinks it necessary to encourage its employees to study for and pass such examinations, it will not be precluded from considering the making of appropriate rules in this behalf. As to leave covering involuntary absence owing to circumstances other than illness over which an employee has no control, we again see no sufficient grounds for giving any specific directions.

294. There remains the question of a leave reserve. With regard to Government departments it seems that leave reserves on the basis of certain percentages of the staff are maintained in certain cadres in which specialised training is necessary and it is felt that raw recruits cannot efficiently fill vacancies. It is believed that the percentage of leave reserve in the departments of the Government of Bombay varies from 10 to 14 per cent. The percentage of leave reserve in the Posts and Telegraphs department of the Central Government is 17 and in the Railway Mail Service it is 20[8]. Such reserves are referred to in paragraph 149 of the Central Pay Commission's Report. The subject was discussed at length with reference to the Indian Government Railway Administration concerned in Mr. Justice Rajadhyaksha's award[9] on the trade dispute between such Administration and their workmen.

295. The only award which we have been able to find in which a leave reserve was provided for is an award made by Mr. P. S. Bakhle, Industrial Tribunal, Bombay, on a dispute between the Bombay Gas Company, Limited, Bombay and its workmen[10]. There it was urged on behalf of the company that generally a large number of employees apply for leave during the months of

8. Rule 249 in the Posts and Telegraph Manual, 1941, Volume IV.

9. Rajadyaksha J's award in the trade dispute between the nine Indian Government Railway Administrations and their respective workmen, paragraphs 409 to 428.

10. 1948 I.C.R. (Bom.), p. 781.

April and May every year and that it would be difficult to maintain a leave reserve to meet that contingency. The Tribunal referred to the following observations of the Central Pay Commission in paragraph 149 of their Report:

> "It will be unreasonable to suggest that the leave reserve should be calculated with reference to the simultaneous demands by a number of employees. Public servants will do well in their own interests as well as in the interests of the service to let the head of the office know sufficiently in advance of their intention to take leave. They must also co-operate between themselves and with the head of the office so as to distribute their leave periods in convenient manner."

296. We think that it would be a good thing, at least for the bigger banks, to maintain such reserves; we believe that it would be ultimately to the interest of the banks to build up such reserves. But the object in view would perhaps be practically attained by following the recommendation we have made in Chapter XXIV as to the maintenance of registers of qualified candidates; and we are of opinion that it would not be expedient for us to go beyond this and give any directions on this question.

573

CHAPTER XXII

HOURS OF WORK, OVERTIME, ETC.

SECTION I

HOURS OF WORK

297. We shall now proceed to the following two matters :

(1) Hours of work and overtime.

(2) Should shops and commercial acts and similar provincial enactment apply to all banks without exception? (Items 13 and 35 in Schedule II).

298. As to hours of work, the demands are usually for 7 hours a day on week days, with an interval of half an hour or one hour for the luncheon interval and 3 hours on Saturdays. One union has asked for a 39 hour week and another that the working hours in a week should not exceed 33 hours. Mr. B. B. Singh in his award regarding the majority of banks in the U. P. has prescribed the hours 9-30 A.M. to 5-30 P.M., with an hour's recess, for week days (excluding Saturdays) and 9-30 A.M. to 4-30 P.M. for Saturdays, with half an hour's recess. Mr. R. Gupta in his award regarding the Imperial Bank of India has fixed 10 A.M. to 5 P.M. with half-an-hour's recess for week days (excluding Saturdays and 10 A.M. to 2 P.M. for Saturday as the working hours. Mr. S. K. Sen in his award regarding the Calcutta branches of the Central Bank of India has prescribed similar working hours. Divatia J in the Bombay award did not fix the working hours as standing orders for banks were in the process of formation and it would be open to either party to appeal against the orders of the Commissioner of Labour, Bombay, fixing such hours. Mr. B. B. Singh observed : "There is no doubt that many banks do not observe any strict hours of work and a good many clerks have to stay up very late. This state of affairs is not conducive to the health or the efficiency of bank employees."

Mr. R. Gupta remarked :

> "Everything considered, I thing there is considerable force in the Association's grievance that in many of the bank's offices, specially in the mofussil, very long hours of work are the rule rather than the exception. In saying this I have not lost sight of the bank's argument that long hours may sometimes be the result of bad work on the part of the employee. Undoubtedly this is so in some cases, but generally speaking bad work would hardly be tolerated from any employee by the bank for any length of time. The bank has stated that it is most anxious not to overwork its employees".

Mr. S. K. Sen noted that in the United Kingdom, "where the lunch hour is one hour, *viz.*, from 1 to 2 p.m., the office sits from 9 to 1 and 2 to 4-30, *i.e.*, 6½ hours as recommended by the Central Pay Commission". The Central Pay Commission, in paragraph 96 of their Report, said that "normal office attendance might reasonably be fixed at 38½ hours a week so as to provide for 6½ hours of actual work on each week day after allowing half an hour for lunch and 3½ hours of work on Saturdays".

574

299. We think that excluding the luncheon recess, which should not be less than half an hour on week days, (there being no recess on Saturdays) every employee not belonging to the subordinate staff should attend to his work for 6½ hours a day on week days (excluding Saturdays) and that on Saturdays he should work for 3½ hours, that in the case of members of the subordinate staf the corresponding periods should be 7½ hours and 4 hours a day respectively and that the banks should be left to fix at their discretion the actual hours of the day during which such work should be done. We direct accordingly. We agree with the following remarks to be found in the written statement filed by the Central Bank of India :

> "If the hours of work as claimed by the employees and are laid down by the various awards are to be literally and rigidly followed, many anomalous positions would be created and undue burden would be placed on banks which could not have been intended by the Tribunals of Adjudicators who gave the awards. There are several types of work in a bank which cannot be carried on within the fixed hours laid down in the awards, *e.g.*, Cash-book Writers, Supplementary Writers, whose work arises late in the evening after hours of work intended for customers are over, despatchers who must take up work in connection with posting of letters after they are signed by the Officers sweeping and clearing of bank premises and opening and locking up thereof which must necessarily be done before or after the fixed hours. To laydown that such men also must work within the fixed hours when there is no need for their work or when for the most part they would be idle, is to ignore the realities of the situation and make banks pay for idleness and no work. Moreover, if such an interpretation is to be put on the idea of fixed hours, banks would be required not only to pay the usual remuneration, but also overtime, because their work must necessarily be done for the major part, if not totally, outside the fixed hours".

We agree that where rigidity in the observance of the usual hours of work is not possible or desirable a bank may relax them to the necessary extent. If in any bank the present hours of work are less than those we have laid down it would have the right to raise their number to the level prescribed.

300. The United Commercial Bank, Limited, in its written statement, has complained that "employees in general waste a lot of their time in idle gossip, lethargy, malingering and inaccurate work with the result that the ratio of concentrated work to actual attendance is not more than 50 per cent". It seems to us that there is a certain amount of truth in this complaint, at least with regard to employees in certain banks. It should, however, be the business of the banks concerned to eliminate such wasteful conduct from their employees by taking appropriate measures, which need not always consist in disciplinary action.

SECTION II

Overtime

301. We now come to the subject of overtime. There are three views on the subject : (1) that there should be no provision for overtime work ; if necessary additional staff should be engaged ; (2) that the amount of overtime work that an employee may be required to put in should be limited, say, to

60 hours in a year; and (3) that there should be no such restriction, such work being paid for at higher rates than usual as provided in the local Shops and Establishments Acts, or such other rates as the Tribunal may determine if it has the power to alter the rates fixed by those Acts.

302. Mr. R. Gupta has taken the first view in his award regarding the Imperial Bank of India:

He said:

> "I do not propose any overtime wages for extra work on ordinary days, because I expect the bank at once to examine the staff position at all its offices and so to increase the staff that it will not be necessary ordinarily for any employee to work longer than the above hours. In my opinion this is the proper remedy for the defect complained against, rather than making provision for overtime wages. Such provision often leads to continuance of the objectionable practice of working employees long hours because the employer finds it cheaper to pay overtime than to engage additional staff, and thus the real objective, *viz.*, saving the staff from fatigue and strain, is not attained. I appreciate fully that in an institution like a bank it is not possible for every employee to down tools on the stroke of 5 P.M. and go home. Occasionally, it may be necessary for an employee to stay on in order to complete the day's work. This happens in every office and is inevitable. What must be stopped is the systematic over-working of staff. If the bank, by examining the staff position in all its branches, is unable to introduce the desired change within a period of, say, six months from the date of this Award it will be for the Association to take up the Issue again, which I think it is quite powerful enough to do. The Association must at the same time clearly understand that the fixing of office hours does not mean that everyday every employee will be able to put down his pen at 5 P.M. and go home. A reasonable view must be taken. As regards what is described as the Balance Team, which at present has to work extra hours every day at the Head Office, it will continue to receive over-time wages as at present if it is found impossible to discontinue it by increasing the number of the staff under the general revision which I have proposed".

303. We are inclined to agree in general with these observations, but as not many of the employees' representatives have asked for the total abolition of the overtime system, which is recognised in the Shops and Establishments Acts, we think that we should be justified in restricting total number of hours for which an employee may be required to work overtime in a year; and we, accordingly, direct that no employee shall be required to do more than 90 hours' overtime work, or with his consent more than 120 hours' work, in any calendar year, the meaning to be attached to "overtime work" being such work as is in excess of the amount of work fixed by us, subject to any provisions specifically mentioned in this Award. As regards the rates of payment for such work, we find that the provisions to be found in the different Shops and Establishments Acts are not uniform and that no local Acts relating to overtime work have been enacted in the States of Bihar and Orissa nor in respect of the centrally administered areas of Ajmer and Coorg. We direct that where an employee is required to work in excess of the work fixed by us, he shall be entitled, in respect of the overtime work, to pay at the rate of twice his ordinary rate of pay.

304. As to the work done in banks on the two days in the year which are declared public holidays because of half-yearly and yearly closing of banks accounts, we agree with Mr. R. Gupta in his remark that bank employees must not mind doing extra work for their employers on those days which are declared public holidays specifically for the said purpose; but we direct that where it is customary in any bank to make any extra payment for such work it shall continue to be paid. As to work done on other holidays, we recognise that sometimes it may not be possible for a bank to avoid such work, *e.g.*, when there are several holidays on consecutive dates. But we direct that such work shall be reduced as much as possible and that it shall be paid for at overtime rates.

SECTION III

Applicability of Shops and Establishments Acts

305. We have now to deal with the question whether Shops and Commercial Establishments Acts and similar provincial enactments should apply to all banks without exception. It is somewhat difficult to understand what exactly is the scope and meaning of this question. Possible cases of conflict between provisions in such Acts and our directions have been discussed by the parties, the banks generally contending that no direction from us can override such provisions and the employees' representatives contending that if such a view be adopted, much of what the Tribunal may decide, *e.g.*, as to overtime, may become nugatory, and that as such Acts are intended for a large number of institutions or establishments of very different kinds, and thus only the largest common factors can enter into such enactments, the relief afforded by them are necessarily small and must be regarded as the minimum to be afforded by the employers. We think that there is a good deal of force in the employees' contentions. Take, for instance, the following provision regarding leave in sub-section (1) of section 35 of the Bombay Shops and Establishments Act, 1948:—

> "Every employee who has worked for not less than two hundred and seventy days during a year, shall be allowed, during the subsequent year, leave, consecutive or otherwise, for a period of not less than fourteen days, inclusive of the day or days during the period of such leave, on which, a shop or commercial establishment remains closed under sub-section (1) of section 18 or he is entitled to a holiday under sub-section (1) of section 24 or section 31; provided that such leave may be accumulated up to a maximum period of twenty-eight days".

306. In the directions which we have given in the last Chapter we have not laid down the condition of having worked for not less than 270 days in the previous year; the period of earned leave prescribed by us in the case of clerks exceeds 14 days in a year; and the period for which such leave may be accumulated under our award is also more than 28 days. It may be contended that the expression "not less than 14 days" is not inconsistent with such periods of earned leave as we have allowed, but that the other two conditions to be found in the abovementioned section must retain their effect and prevail over our directions. It is, however, to be remembered that the main object of these Acts is the protection of the employees, and in the section quoted

above the first condition purports to be one on fulfilment of which the employer is *bound* to grant leave to an employee; he is not precluded or prevented from giving leave to an employee even if he should not have worked for 270 days in the previous year; nor is he prevented from giving more leave than is provided for. As to the proviso at the end of the section that, again, appears to have been inserted with the object of encouraging him to take leave whenever possible, not with a view to penalising him. An employer is, again, not precluded from allowing the accumulation of leave to a greater extent than allowed by the proviso. Thus where inspite of any provision in any such Act it would be open to an employer to give additional relief or advantage to an employee in his establishment, it would be legitimate for this Tribunal (so to speak) to make an agreement between the parties relating to such relief or advantage (see Chapter II regarding the functions and jurisdiction of Industrial Tribunals). In our opinion all cases of conflict between the Acts in question and our award are to be viewed in the light of the considerations set out above. We have not been referred to any possible instances of conflict between our award and the Acts in question which cannot be resolved by the application of the said considerations; and we do not, therefore, propose to expatiate on the somewhat indefinite subject matter in question to any greater extent. If any party finds it necessary to get a declaration from any Court regarding such a conflict which leads to an unsatisfactory or embarrassing position, it would be for that Court then to ascertain and give effect to the correct position in law. Where there is not even an apparent conflict between our award and any local Shops and Establishment Act, the provisions of such Act, so far as they apply to the banks, will, of course, be operative.

578

CHAPTER XXIII

Medical Aid and Expenses

307. We shall now deal with the question of medical aid and expenses (item 14 in Schedule II). This main demands of the employees on this subject are as follows :—

(1) employees and their families should be entitled to free medical treatment including medicines, injections, etc., necessary for such treatment;

(2) the doctor appointed by a bank for treating its employees should be one not living so far from the bank that his services would not be easily available to the employees;

(3) such doctor should be available for examining and prescribing for an employee or a member of his family at his residence, if necessary;

(4) at least the bigger banks should arrange to reserve beds for their employees in State hospitals at the headquarters, special arrangements being made for employees suffering from tuberculosis, which is common among bank employees;

(5) the small banks may combine and have a panel of doctors jointly for their employees and their families;

(6) the banks should combine and open their own dispensaries for the supply of medicines to their employees and their families;

(7) whatever amenities are provided for the officers of a bank in the way of free medical treatment should be available to the other employees.

Mr. B. B. Singh dealt with this subject in the following way :—

"The banks concede that in some malaria districts they have arranged for free supply of medicines. But there is no general practice of giving free medical aid to all employees and their family. The Allahabad Bank says that the solution of that problem lies in the establishment of a Bankers' Health Insurance Society on a voluntary subscription basis. I commend this scheme to all the banks, specially of class 'A'. I also recommend that at big centres all 'A' class banks should have a system of part-time medical practitioner, attending at fixed hours at a fixed place for free consultation by the employees of the banks. Medical attendance on the families of the employees is a bigger problem and I do not think that the banks in this country are in a position just now to undertake it. I, therefore, recommend free medical consultation for all the employees of class 'A' and class 'B' banks, and decide the issue accordingly." In the Bombay award the following directions were given :—

"All the big banks should have a medical officer who can be consulted free of charge by the employees. It would be voluntary on the part of the banks to supply medicines free of charge. This, of course, will be limited to employees and would not apply to the other members of their family. In the case of small banks, I do not think they should be compelled to engage a doctor for consultation by the employees free of charge."

579

Mr. R. Gupta found that the arrangements made by the Imperial Bank of India, Bengal Circle, were that there was a doctor appointed to attend on the employees at Calcutta, Kanpur and possibly at one other place, who examined and prescribed for them but that the bank did not pay for any medicine, etc., required except for certain elementary specifics kept at the dispensary attached to some of its offices. He was unable to concede the demand for free supply of medicines or for the free treatment of the employees' families. The bank had a rule that its doctor will attend on clerks at their homes in Calcutta when necessary free of charge, and he directed that that rule should be enforced, not only at Calcutta but other places where the staff was large enough to necessitate the retention of a wholetime medical officer. He also suggested that the medical officer at Calcutta should visit the Calcutta branches once a day or once every other day and that in the mofussil branches the bank should arrange that the employees might visit the senior local Government doctor or a private practitioner of local repute at the expense of the bank. Mr. S. K. Sen in his award regarding the Calcutta branches of the Central Bank of India followed the Bombay award.

308. The employees' representatives have relied on the fact that an employee of the Central Government or of a State Government is ordinarily entitled to free medical treatment, including all medical and surgical facilities available at a Government hospital and the supply of such medicines, vaccines, sera or other therapeutic substances as are ordinarily available at such hospitals, and that the members of the families of the Central Government servants are also entitled free of charge to medical attendance and treatment at Government hospitals on the scale and conditions allowed to the Government servant in each case. [See the Central Service (Medical Attendance) Rules 1944 and the Central Government Finance Department's office memorandum No. F.-12 (f)-W.II/45, dated the 18th April 1945.] The employees demand that similar facilities should be provided by the banks, and that, if necessary, several banks should join together in retaining the services of physicians and in reserving accommodation in hospitals for this purpose. The banks have contended that the health of the other members of an employee is no concern of theirs, and that in many Western countries medical aid to workers and other citizens is considered to be a responsibility of the State concerned. It may be pointed out that the International Labour Organisation at its 26th Session held at Philadelphia in 1944 drew up a Social Security programme including compulsory social insurance schemes covering, *inter alia,* sickness, maternity and invalidity; and that some States have drawn up comprehensive social security plans, *e.g.,* the Beveridge Plan in England, the Wagner-Murrey Plan in the United States of America and the Marsh Plan in Canada. Social insurance has not, however, made much progress in India. The only forms of social insurance undertaken in India are the Workmen's Compensation Act, 1923, enactments regarding maternity benefits in several States and certain sickness benefit schemes initiated by certain industrial concerns [see Prof. Adarkar's Report on Health Insurance for Industrial Workers, (1944).] The employees' State Insurance Act was passed in 1948. It applies initially to all perennial factories, and it provides that the appropriate Government may, in consultation with the Employees' State Insurance Corporation set up under the Act and with the approval of the Central Government, after giving six months' notice extend the provisions of the Act to any other establishment or class of establishments. Under this Act, out of contributions made by the employers and the employees the latter are to be insured against sickness, confinement in

the case of females, disablement or death as a result of an employment injury and the expenses of medical treatment and attendance. Till the Act or a similar enactment comes into force, some provision for medical aid and expenses appears to be necessary; and the directions given by us below should be understood as subject to this qualification.

309. We are unable to accede to the demand regarding medical aid to the employees' families. Government are able to provide for such facilities without much extra cost owing to their existing medical services and institutions like State hospitals and dispensaries. It is also to be remembered that expenses owing to medical aid and attendance in respect of an employee's family have already been included in the calculations regarding the cost of living, although the expenses shown in Mr. Subramanian's Report may have been inadequate in the lower income-groups among the employees of the Central Government owing to the general inadequacy of their earnings. We have decided that as regards the employees the responsibility for medical treatment and attendance shall be greater in the case of the banks of class A than in the case of the other banks, and, as we have already said, we have made no deductions on this account from our estimates as to the cost of living. If any bank is at present providing for such treatment and attendance in respect of its employees' families, we direct that such facilities should continue to be afforded. We give the following directions in respect of the banks in Class A[1].

(1) Each bank shall appoint a medical practitioner (to be referred to hereinafter as the authorised doctor) for attendance on and treatment of its employees.

(2) Every employee shall during illness be entitled, free of charge, to attendance and treatment by the authorised doctor, whose bills shall be paid by the bank concerned.

(3) the expression "attendance" shall include such methods of examination as are considered necessary by the said doctor, and in case of illness which compels an employee to be confined to his residence, attendance and such examination at his residence, as well as such consultation with a specialist or other medical practitioner as the said doctor may find necessary.

(4) The expression "treatment" shall mean the use of all medical and surgical facilities as are available to the authorised doctor and are found necessary by him, and shall include—

(a) the supply or procurement of such medicines, vaccines, sera or other therapeutic substances as the authorised doctor may certify in writing to be essential for the recovery, or for the prevention of serious deterioration in the condition, of the employee,

(b) accommodation suited to the employee's status in a hospital provided that the authorised doctor certifies in writing that it is necessary that the patient should be treated at a hospital, and

(c) any expenses involved in travelling either by the patient or the authorised doctor rendered necessary for the treatment, provided that they are so certified by the said doctor.

(5) (1) If the authorised doctor is of opinion that owing to the absence or inadequacy of facilities or to the severity of the illness an employee should be treated at his residence, he shall be entitled to be so treated.

1. The directions are modelled largely on the Central Services (Medical Attendance Rules 1944).

(2) In such a case an employee who prefers to be treated by a medical practitioner other than the authorised doctor may be so treated, and in such an event he shall be entitled to receive towards the cost of such treatment incurred by him a sum equivalent to the cost of such treatment as he would have been entitled, free of charge, to receive under these provisions, if he had not been treated at his residence, or equivalent to the actual cost incurred, whichever is less.

(3) Claims for sums stated to be due under clause (2) shall be accompanied by—

(*a*) by a certificate in writing by the authorised doctor, stating :

(*i*) his reasons for the opinion referred to in clause (1);

(*ii*) the cost of similar treatment referred to in clause (2); and

(*b*) by a certificate in writing by the medical practitioner referred to in clause (2) stating the actual cost of his treatment.

310. We give the following directions in respect of the banks in class B :—

Our directions in respect of the banks in class A shall apply, subject to the proviso that in the case of no employee shall the total expenses on account of medical attendance and treatment payable by a bank exceed the following limits in a calendar year :—

Basic pay	Class of Areas		
	I	II	III
	Rs.	Rs.	Rs.
Not exceeding Rs. 75 a month	15	12	10
Exceeding Rs. 75 but not exceeding Rs. 150 a month	25	20	15
Exceeding Rs. 150 but not exceeding Rs. 250 a month	35	30	25
Exceeding Rs. 250 a month	50	40	35

311. We give the following directions in respect of the banks in class C :

Our directions in respect of the banks in class A shall apply, subject to the proviso that in the case of no employee shall the total expenses on account of medical attendance and treatment payable by a bank exceed the following limits in a calendar year :—

Basic pay	Class of Areas		
	I	II	III
	Rs.	Rs.	Rs.
Not exceeding Rs. 50 a month	10	9	8
Exceeding Rs. 50 but not exceeding Rs. 100 a month	15	12	10
Exceeding Rs. 100 but not exceeding Rs. 200 a month	20	18	16
Exceeding Rs. 200 a month	30	25	20

582

CHAPTER XXIV

RECRUITMENT, CONDITIONS OF SERVICE, ETC.

SECTION I

RECRUITMENT

312. In this Chapter we propose to deal with the following matters: method of recruitment, terms and conditions of service and procedure for termination of employment or for taking other disciplinary action (item 17 of Schedule II), subsistence allowance during periods of suspension (item 22).

313. *Method of recruitment.*—There need not be any fixed method of recruitment for temporary employees and apprentices, although it would be best to have lists of candidates, not only for the appointment of probationers and permanent employees but also for temporary appointments. Persons who have worked in temporary appointments would be able to demonstrate their fitness for permanent appointments. We recommend that banks should keep registers of candidates in which their names, ages, qualifications, previous experience and addresses would be entered, also any special merit or special recommendation by any person; that this register should be revised annually and kept up-to-date; that when a candidate has worked temporarily, the management's opinion as to how he has worked should be noted; that the names of employees who have had to be retrenched should also be entered in this register; that when a vacancy has to be filled up (1) retrenched employees, provided that there are no adverse remarks sufficient to disqualify them and, next after them, (2) candidates who have worked temporarily and have won approval should first be considered for appointment. In banks of the A and B classes, at least for appointments in offices and branches in areas of classes I and II, we think that a candidate for a clerical post should have passed the matriculation or school leaving certificate examination or an examination of similar standard. It is also desirable, at least when a number of appointments are to be made at about the same time, that vacancies, the necessary qualifications and the pay scales, etc., proposed to be applied should be advertised in newspapers or that notices about such vacancies, etc., should be put up on the bank's notice boards for at least a week before the selection is made. We would also stress the extreme desirability of avoiding any impression that any favouritism or act of nepotism is at the bottom of any appointment.

314. We direct that in the case of all permanent vacancies an appointment shall be made only after the candidate has produced a satisfactory medical certificate and that such appointment, in the first instance, shall be on probation for a period of six months, at the end of which, if the employee's work be approved he shall be confirmed; and that if it be desired, in exceptional circumstances, that the employee's work should be watched for a further period, such period shall not exceed three months, at the end of which the employee should be either confirmed or discharged from service. We further direct that on a candidate's appointment as a temporary employee, a probationer or a permanent employee he shall be given a written order by the bank specifying the kind of appointment and the pay and allowances to which he would be entitled, and that such a written order shall be given on the appointment also of part-time employees.

315. With regard to godown keepers, we understand that many of them are kept on a temporary basis, some throughout their service, although they are often admitted to the benefits usually enjoyed by the permanent staff. The Central Pay Commission, in paragraph 130 of their Report, noticed that in some departments public servants remained temporary for all their life-time and that in some dapartments there had persisted the pernicious practice of discharging a whole mass of employees on the 31st March and re-employing them on the 1st April every year; and they remarked, "It is high time that this state of things is remedied". With regard to godown keepers, Mr. Justice Bind Basni Prasad, Chairman of these Banks Concialiation Board in the United Provinces, recommended that if any godown keeper had put in a total service of at least two years he should be made permanent, this recommendation being made on a suggestion of the banks themselves, which appeared before him. In the industrial dispute between the Central Bank of India, Limited, and its employees in its Calcutta branches, also such a demand was made before the learned Adjudicator Mr. S. K. Sen and the bank accepted the demand and a direction to that effect was made. We direct that in cases in which an employee has remained on a temporary basis for more than two years he shall be deemed to have become permanent, unless the post to which he is appointed is of a temporary nature. We direct that all posts of a temporary nature shall be declared to be such once in each year by the management, a list of them being published on the bank's notice boards.

316. For recruitment to the clerical staff members of the subordinate staff who are sufficiently literate and intelligent ought not to be neglected, even though they may not have passed the matriculation or a similar examination. We think that in the lists of candidates maintained by the banks the names of such members of the subordinate staff as are considered eligible should be entered and that candidates from this class should be considered next after retrenched employees, if any, and persons, if any, who have worked temporarily.

SECTION II

Conditions of Service

317. *Conditions of service.*—These should include provisions regarding leave, hours of work, overtime, medical aid, transfers, travelling allowance and promotions, but as these are specific items (Nos. 12, 13, 14, 25, 26 and 31) in Schedule II such matters will not be dealt with here. The expression "conditions of service" has a wide significance, but we propose to examine only the following matters which may be said to be involved in the said expression: classification of employees; search; temporary stoppage of the bank; effect of confirmation or permanent employment; the age for retirement; the maintenance of service books; redress of grievances; and service certificate.

Classification of employees.—We direct that employees shall be classified as:—

(*a*) permanent employees;
(*b*) probationers;
(*c*) temporary employees; and
(*d*) part-time employees;

these expressions having the following meanings :—

(a) "permanent employee" means an employee who has been appointed as such by the bank,

(b) "probationer" means an employee who is provisionally employed to fill a permanent vacancy or post and has not been made permanent or confirmed in service.

(c) "temporary employee" means an employee who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature.

(d) "part-time employee" means an employee who does not or is not required to work for the full period for which an employee is ordinarily required to work and who is paid on the basis that he is or may be engaged in doing work elsewhere.

Search.—We direct that an officer appointed for the purpose by the manager shall have the power to search or cause to be searched any employee when the latter leaves the premises of a bank, provided that the person of a female employee shall not be searched by or in the presence of a male, and that every search shall be conducted in the presence of not less than two persons.

Temporary stoppage of Bank.—We give the following directions :—

(1) In the event of a fire, catastrophe, an epidemic, civil commotion or other cause beyond the control of the bank, it may at any time, without notice or compensation in lieu of notice, close down, as the event may require, the bank or any branch, department or part thereof for a reasonable period.

(2) An employee affected by a stoppage under clause (1) above shall be deemed to be on privilege leave to the extent such leave is admissible; and for the balance of the period, except where his services are dispensed with, he shall be deemed to be on leave without pay.

Effect of confirmation or permanent appointment

We direct that on confirmation or permanent appointment an employee shall be entitled to all the privileges enjoyed by, and shall be subject to all the liabilities cast upon, the other permanent members of the staff and that he should further be entitled to have the period of his probation added to the years of his permanent service for the purpose of the grant to him of any gratuity or pension.

Age for retirement.—The Central Pay Commission were inclined to agree with the opinions expressed before them against the wastage of man-power resulting from too early retirement from service of persons still capable of good work. They doubted if in respect of Indians serving in this country it was necessary to maintain the superannuation age at 55 years, the existing limit in the majority of the higher Government services, and they recommended that the age for compulsory retirement should uniformly be 58 years for all services, with an option to Government to retire an employee on grounds of loss of efficiency at 55 years. Though the Central Government have not been able to give effect to the Commission's recommendation, we think that

it is essentially sound; we, accordingly, direct the adoption of the following rule by the banks concerned; after an employee has attained the age of 55 years he may be required by his employer by notice, if his efficiency be found to be impaired, to retire after the lapse of two calendar months from the date of the notice; subject to this rule and also to any rule under an existing Pension Fund no employee shall be compelled to retire before he has attained the age of 58 years. An employee, however, shall be entitled to resign his appointment at any earlier age by giving three months' notice to his employer and on such resignation having become effective he shall be entitled to the benefits as to provident fund, gratuity and pension as provided by the existing rules.

Maintenance of Service Books.—We think that in the case of every employee except one who is engaged on a part-time basis, whether he is a temporary employee, a probationer or a permanent employee, a service book should be maintained, containing at least the following particulars: name, date of birth, identification marks, entry into service as a temporary employee or probationer, confirmation or permanent appointment, pay on such occasions, promotion, pay on promotion, disciplinary action, if any, taken, any remarks about his efficiency or character made by his superiors, resignation or retirement, leave taken or absence from duty, officiating or acting appointments and deputation, if any, with dates wherever possible. We direct accordingly.

Redress of grievances.—(1) Any employee desirous of the redress of a grievance relating to unfair treatment or wrongful exaction on the part of the bank or a superior shall either himself, or through a lawyer or representative of a registered union, submit a complaint to the manager or any officer appointed by the manager in this behalf.

(2) The manager or such officer shall, as soon as possible, investigate the complaint at such times and places as he may fix. The employee concerned and his lawyer or the representative of the union shall have the right to be present at such investigation. A copy of the order finally made shall be supplied to him if he asks for one:

Provided that complaints relating to assault or abuse by any person holding a supervisory position or refusal of any application for urgent leave shall be enquired into immediately by the manager or by such officer as he may appoint in this behalf.

Service certificate.—Every employee who leaves service or retires or is dismissed or discharged shall without avoidable delay be given a service certificate.

SECTION III

Procedure for termination of employment and disciplinary action

318. We propose to deal under the subject of "termination of employment" with (1) discharge unconnected with any disciplinary action or punishment, (2) discharge in cases in which (a) the evidence is insufficient to justify disciplinary action or (b) though such evidence may exist it is not considered necessary or expedient to take such action and (3) retrenchment in the interests of the bank. Under the subject of disciplinary action we propose to deal with (1) dismissal, (2) suspension, (3) warning or censure, (4) fine, (5) the making of adverse remarks, and (6) the stoppage of an increment.

586

319. We take the subject of disciplinary action first. It is an elementary principle of natural justice that a person against whom such action is proposed or likely to be taken should, in the first instance, be informed of the particulars of the charge against him, that he should have a proper opportunity to give his explanation as to such particulars, and that the final order that may be passed should be made after due consideration of all the relevant facts and circumstances. With this object in view we give the following directions:

(1) By the expression "offence" shall be meant any offence for which an employee is liable to conviction and sentence under any provision of law.

(2) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank shall take steps to prosecute him or get him prosecuted; and in such a case he may also be suspended. If he be convicted he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in clause (5) below, provided that if an employee be convicted of a petty offence involving no moral turpitude, *e.g.*, under the municipal road traffic rules (such as riding a cycle without a light at night) and sentenced only to a fine, he shall not be dismissed but he may be dealt with as if he had been guilty of "minor misconduct" as defined and provided for below. If he be acquitted, it shall be open to the management only to proceed against him under the provisions set out below relating to discharges. If he be acquitted, he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances *minus* such subsistence allowance as he has drawn and to all other privileges for the period of suspension; provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowance as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct. If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above, and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set out below relating to discharge, and the provisions set out above as to pay, allowances and the period of suspension will apply, the period up to date for which full pay and allowances have not been drawn being treated as one of suspension.

(3) If after steps have been taken to prosecute an employee, or to get him prosecuted, for an offence he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct" [in the circumstances stated in clause (2)] as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management only to proceed against the employee under the provisions set out below relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to

all other privileges for such period. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in clause (2) above shall apply.

(4) By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) engaging in any trade or business outside the scope of his duties except with the permission of the bank;

(b) unauthorised disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;

(c) drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank;

(d) wilful damage or attempt to cause damage to the property of the bank or any of its customers;

(e) wilful insubordination or disobedience of any lawful order of the management or of a superior;

(f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;

(g) wilful slowing down in performance of work;

(h) gambling or betting on the premises of the bank;

(i) speculation in stocks, shares, securities or any commodity, whether on his account or that of any other persons;

(j) doing any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the bank in serious loss;

(k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;

(l) abetment or instigation of any of the acts or omissions above-mentioned;

Provided that all the items mentioned above shall be deemed to be subject to the right of an employee to take part in legitimate trade union activities.

(5) An employee found guilty of gross misconduct may:

(a) be dismissed without notice, or

(b) be warned or censured, or have an adverse remark entered against him, or

(c) be fined, or

(d) have his increment stopped, or

(e) have his misconduct condoned and be merely discharged.

(6) By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) absence without leave or overstaying sanctioned leave without sufficient grounds;

(b) unpunctual or irregular attendance;

(c) neglect of work; negligence in performing duties;

(d) breach of any rule of business of the bank or instruction for the running of any department;

(e) committing nuisance on the premises of the bank;

(f) entering or leaving the premises of the bank except by an entrance provided for the purpose;

(g) attempt to collect or collecting monies within the premises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

(h) holding or attempting to hold or attending any meeting on the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(i) canvassing for union membership or collection of union dues or subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(j) failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank; unseemly or unsatisfactory behaviour while on duty;

(k) marked disregard of ordinary requirements of decency and cleanliness in person or dress;

(l) incurring debts to an extent considered by the management as excessive.

(7) An employee found guilty of minor misconduct may:

(a) be warned or censured, or

(b) have an adverse remark entered against him; or

(c) have his increment stopped for a period not longer than six months.

(8) In all cases in which action under paragraph (3), (5), or (7) may be taken, the proceedings held shall be entered in a book kept specially for the purpose, in which the date or dates on which the proceedings are held, the name of the employee proceeded against, the charge or charges, the evidence on which they are based, the explanation and the evidence, if any, tendered by the said employee, the finding or findings with the grounds on which they are based and the order passed, shall be recorded with sufficient fulness, as clearly as possible; and such record of the proceedings shall be signed by the officer who holds them.

(9) When it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days thereof.

(10) The procedure in such cases shall be as follows :

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended by a representative of a registered union of bank employees, or with the bank's permission, by a lawyer,

(b) pending such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension ; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances, etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the " gross " type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge but where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service., Discharge in such cases shall not be deemed to amount to disciplinary action.

320. Where the directions given above conflict with the procedure or rules in force in any bank regarding disciplinary action they shall prevail over the latter. There may, in such procedure or rules, exist certain provisions outside the scope of the directions given by us above enabling the bank to dismiss, warn, censure, fine an employee or have his increment stopped or have an adverse remark entered against him. In all such cases also we think that the provisions set out in clauses (8) and (9) should apply, and we direct accordingly.

321. It also seems to us necessary that a bank should decide which officer shall be empowered to take disciplinary action in the case of each office or establishment and that it should also make provision for appeals against orders passed in disciplinary matters to an officer or a body not lower in status than the manager, who shall if the employee concerned so desires in a case of dismissal hear him or his representative before disposing of the appeal. We direct accordingly and further direct that the names of the officers or the body who are empowered to pass the original orders or hear the appeal shall from time to time be published on the bank's notice boards, that an appeal shall be disposed of as early as

possible, and that the period within which an appeal can be preferred shall be forty-five days from the date on which the original order has been communicated in writing to the employee concerned.

SECTION IV

Termination of Employment

322. We now proceed to the subject of termination of employment. We give the following directions:

(1) In cases not involving disciplinary action (*i.e.*, in cases in which the employee in question has not *prima facie* been concerned in the commission of an offence or in any act or omission falling within the scope of gross misconduct or minor misconduct as defined above[1]), and subject to clause (7) below, the employment of a permanent employee may be terminated by three months' notice or on payment of three months' pay and allowances in lieu of notice, and the employment of a probationer may be terminated by 45 days' notice or on payment of 45 days' pay and allowance in lieu of notice.

(2) The reasons for the termination of service under clause (1) shall be recorded in writing and shall be communicated to him, if he so desires at the time of discharge unless such communication, in the opinion of the management, is likely directly or indirectly to lay any person open to civil or criminal proceedings at the instance of the employee.

(3) A permanent employee desirous of leaving the service of the bank shall give one month's notice in writing to the manager. A probationer desirous of leaving service shall give 14 days' notice in writing to the manager. A permanent employee or a probationer shall, when he leaves service, be given an order of relief signed by the manager.

(4) If any permanent employee leaves the service of the bank without giving notice, he shall be liable to pay the bank one month's pay and allowances. A probationer, if he leaves service without giving notice, shall be liable for 14 days' pay and allowances.

(5) The services of any employee other than a permanent employee or probationer may be terminated, and he may leave service, after a week's notice. If such an employee leaves service without giving such notice he shall be liable for a week's pay (including all allowances).

(6) An order relating to discharge or termination of service shall be in writing and shall be signed by the manager. A copy of such order shall be supplied to the employee concerned.

(7) In cases of contemplated closing down or of retrenchment of more than five employees, the following procedure shall be observed:

(*a*) two months' notice of such proposed action shall be given individually to all the employees concerned, with a statement of the reasons for such proposed action;

(*b*) the manager or an officer duly empowered in this behalf shall within the period of such notice, hear any representation from the employees concerned or any registered union of bank employees;

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1. For the principle underlying this specification see the case of *Gauri Ambu and others* v. *Phoenix Mills, Limited, Bombay*, 1949 I.C.R. (Bom.), p. 1.

(c) after the hearing of such representation and the receipt of a report in the matter, if necessary, by the management, if it be decided to give effect to the contemplated closing down or retrenchment in the original or an amended form, the service of each employee concerned may be terminated by giving three months' notice or payment of three months' pay and allowances in lieu of notice.

SECTION V

Notices, Subsistence Allowance during Suspension

323. We think it necessary to lay down the following directions regarding notices, orders, etc. Notices which are required to be given shall be served individually on the employees affected and their acknowledgments taken, and shall also be exhibited on the notice-boards of the bank at the offices or establishments concerned. Such notices as are so exhibited shall be in English and also in the principal language of the district or locality in which each such office or establishment is situated. Any notice, order, charge-sheet, communication or intimation which is meant for an individual employee shall be in a language understood by the employee concerned. In the case of an absent employee notice shall be sent to him by registered post, with acknowledgment due.

324. There now remains the subject of subsistence allowance during the periods of suspension. We do not think it right, as is the case in some banks, that an employee under suspension should be wholly deprived of his pay and allowances. We direct that an employee shall be entitled, during the period of his suspension, to a subsistence allowance at such rates as the suspending authority may direct, but not less than one-third of the pay and allowances which he would, but for the suspension, have drawn.

325. The directions given in this Chapter should be deemed to be given not only with reference to items 17 and 22 but also with reference to item 36 (relating to Standing Orders regulating the conditions of service of bank employees) in Schedule II. The said directions should be understood to be subject to the provisions of any law for the time being in force; for instance, if there be an industrial dispute regarding a matter which in the opinion of the management calls for disciplinary action and the dispute has been referred to conciliation or to a Tribunal, the provisions of section 33 of the Industrial Disputes Act, 1947, will apply.

592

CHAPTER XXV

TRANSFER, TRAVELLING ALLOWANCE, ETC.

SECTION I

TRANSFERS

326. In this Chapter we shall deal with the following matters:

(1) Policy regarding transfer of employees,

and

(2) Travelling allowance and joining time on transfer.

(Items 25 and 26 in Schedule II).

327. *Policy regarding Transfer.*—The main demands on this subject are as under:

(1) no employee should be transferred without his consent;

(2) no employee should be transferred outside the State in which he has been serving;

(3) if an employee is transferred to another station the bank should provide him there with suitable accommodation;

(4) members of the subordinate establishment should not be transferred;

(5) members of the executive committee and other officers of a union should not be transferred, except with their consent;

(6) if a transfer against the wishes of an employee cannot be avoided it should be made within the same State or regional or linguistic area;

(7) the system of transferring employees, simply because they happen to be relatives of other employees which exists in certain banks, should be abolished.

328. We agree that so far as members of the subordinate establishment are concerned, they should not ordinarily be transferred except at their request or with their consent. That should be the ordinary rule, but there may be exceptional circumstances necessitating a transfer in the case of such employees. We direct that in a such case a written order shall be passed stating the reason for the transfer.

329. We do not think that in other cases a transfer should be made only on the prior consent of the employee concerned. Transfers are often necessitated by the exigencies of the administration for which the bank authorities are responsible and they must, therefore, be generally left to their discretion. Certain cases, however, have been brought to our notice of individual complaints showing or suggesting that transfers are sometimes made as disciplinary measures or as a means of harassing or weakening a trade union and its officials. Mr. J. N. Mehrotra, General Secretary of the U. P. Bank Employees' Union, has stated before us that he has been transferred to 36 places within a period of ten months and that 11 secretaries belonging to his union have within a short period been transferred from Kanpur where the Union's headquarters are situated. These statements have not been controverted. We express our strong disapproval of

such measures. In order that such transfers may be avoided as far as possible we give the following directions:

(1) all registered bank employees' unions, from time to time, shall furnish the banks to which any of their office-bearers belong with the names of such office-bearers,

(2) where the transfer of any of them is contemplated, at least five clear working days' notice should be put up on the notice boards of the bank of such contemplated action,

(3) any representations, written or oral, made by the union shall be considered by the bank,

(4) if any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank's reasons for regarding them as inadequate, and

(5) the decision shall be communicated to the union as well as to the employee concerned.

330. We further direct that as far as possible a transfer outside the State in which an employee has been serving, or outside the area in which the language of the said State is spoken, as well as frequent transfers of the same employee (say, more than once a year) against his wishes, shall be avoided. We regard the demand to be provided with housing accommodation at the place of transfer as unreasonable, specially in these days of shortage of such accommodation, and we think that with regard to the employment of more than one relation in the same establishment the matter had best be left to the good sense and discretion of the bank authorities.

SECTION II

Travelling Allowance

331. *Travelling Allowance.*—The demands on this subject that have been made are generally that the travelling allowance on transfers and other occasions when journeys have to be performed should be on the Government scale or the more generous scale in force in the Reserve Bank of India, that there should besides be a "Special transfer allowance", that there should also be a diem or daily allowance for the days occupied by such journeys and that the cost of an employee's and his family's proceeding to his home or elsewhere during leave and their return to the place of duty should be paid by his employer.

332. A number of banks, specially the big banks, have laid down rules regarding travelling allowances and we consider it unnecessary to frame a complete set of rules on the subject. We, however, wish to give a few directions free from elaborate details and direct that the existing rules on the subject, wherever they are less liberal than our directions, shall be brought into conformity with them within two months of the publication of this award. We prescribe the following rules:

(*A*) *General.*—(1) Members of the staff who do not belong to the subordinate establishment shall be paid railway or steamer fares at rates not less than second class fares and members of the subordinate establishment shall be paid such fares at third class rates. When a steamer company has two rates of fare, one inclusive and the other exclusive of diet, the expression "fares" shall mean those without diet; and where the members of an employee's family are allowed

travelling allowances they shall be at the rates to which the employee is entitled, subject to the rules as to half fares for children.

(2) The following maximum units shall be regarded as constituting the family of an employee, including himself, taking a child for which a half fare has to be paid as half a unit and counting a widowed mother or an unmarried sister wholly dependent on the employee as members of his family where he, his wife and children, if any, do not come up to the said maximum. If an employee has more than one wife, only one wife shall be treated as included in his family.

Class of banks.	Employees who are not members of the subordinate staff.		Members of the subordinate staff.	
	Married.	Unmarried.	Married.	Unmarried.
Class A	5	3	4	2
Class B	4	2	3	2
Class C	4	2	3	2

(3) If an employee or any member of his family travels by a class inferior to the class allowed, he shall be entitled to claim travelling allowance only at the rate actually paid.

(4) All claims for travelling allowance shall be supported by a certificate, signed by the employee concerned, to the effect that the amount actually paid by him for the journey was not less than the amount claimed (excluding the extra ¼ or ½ fare claimable by himself).

(5) A claim in respect of a journey shall ordinarily be for the cheapest route and when any other route is taken the reason for taking it shall be given; and a claim in respect of a journey in which the cheapest route has not been taken may be allowed by the sanctioning authority on such reason being found satisfactory.

(*B*) *Journeys on Transfer.*—On a transfer to a place where the employee concerned is expected to stay for a period exceeding forty-five days, an employee shall be entitled to the following, provided that in a case in which a transfer has been sought by the employee and been granted accordingly he shall not be entitled to claim any allowances unless the sanctioning authority, in its discretion, grants them to such extent as it may deem proper:

(1) 1½ fares for himself and one fare for each of the other members of his family, the latter being entitled to join him at the place to which he is transferred at any time within the six months immediately following his journey;

(2) in the case of an employee not belonging to the subordinate establishment, an additional third class fare for a servant if one actually accompanies him or accompanies a member of his family within the period allowed for such member;

(3) the cost of transporting personal effects up to the following maxima (in Bengal maunds), up to one-half of which may be transported by a passenger train, the allowance in respect of the balance being at the rate of transport by a goods train.

Class of banks.	Employees who are not members of the subordinate staff.		Members of the subordinate staff.	
	Married.	Unmarried.	Married.	Unmarried.
Class A	20	15	5	4
Class B	16	12	4	3
Class C	10	6	3	2

(4) any other expenditure unavoidably incurred (*e.g.*, in respect of tonga and cooly hire or of a journey by means of a conveyance other than train or steamer), established to the satisfaction of the sanctioning authority and subject to any rules made by the bank in this behalf.

(*C*) *Other Journeys.*—(1) If any other journey has to be undertaken by an employee in the interests of his bank, he shall be entitled to $1\frac{1}{4}$ fares, provided that in the case of one who is not a member of the subordinate establishment, if he has to stay away from his station for a period exceeding thirty days he shall also be entitled to a single third class fare for one servant taken with him.

(2) In case an employee is recalled from leave before the expiry of his leave, he shall be entitled to $1\frac{1}{4}$ fares for himself and one fare each for such members of his family as may have gone from his station with him when he left it on leave, or joined him later, from the place where he receives the order of recall to such station, along with such costs of transportation of his effects, etc., as the sanctioning authority may deem reasonable. In case he is transferred to another station during leave and required to join there before the expiry of his leave, he shall, in addition, be entitled to draw allowance as if he were transferred from his last station, provided that the total allowances claimed (excluding the extra $\frac{1}{4}$ or $\frac{1}{2}$ fare claimable for himself) shall not exceed the total expenses actually incurred.

333. We do not think that any employee should be entitled to any daily allowance for the days occupied by a journey or to any special transfer allowance. There has also been a demand for a travelling allowance for proceeding on and returning from leave in respect of every employee and his family. Such an allowance is granted by several commercial firms, and the need for such an allowance was brought to the notice of the Central Pay Commission. "All grades of officers," they said (paragraph 93 of their report), "including the highest paid services, have complained that they are often unable to avail themselves of the facility of taking annual leave on account of the fact that the cost of travelling is so heavy that availing of the leave would not be worthwhile except once in two or three years"; and they recommended the grant to civil employees other than those in the Railway Department (who enjoy special concession in this regard) of concessions similar to the Privilege Ticket Order (P.T.O.) obtaining in that Department, but limited to one set of P.T.Os. for a return journey per year for an officer and the members of his family. We do not, however, think that this demand by the employees can be allowed, particularly as we have directed that as far as possible an employee shall not be transferred out of the State in which he is serving. We recommend, however, the adoption of a rule by at least the bigger banks, under which facilities of the kind suggested by the Central Pay Commission, even if somewhat restricted (*e.g.* payment of half the expenses in question, or once in two years), may be available to at least such of their employees, as have their homes at a considerable distance from the place where they have to serve their employers.

SECTION III

Joining Time.

334. *Joining Time.*—We give the following directions:

(1) An employee shall be entitled to joining time when he has to join a new post to which he is appointed while on duty in his old post or when he is on leave during which he is required to join a new post; provided that no joining

time shall be admissible when the change of appointment does not involve an actual change in the situation of his office, and that joining time of not more than one day (which may be a holiday or Sunday) shall be admissible when the new appointment involves a change in the situation of his office but not a new station.

(2) The joining time in cases of transfer from one station to another shall be calculated on the following scale :

(a) five days (exclusive only of a Sunday) for preparation, *plus*

(b) one day for each of the distances prescribed below, or fraction thereof, travelled (or which might be travelled) by the different modes of locomotion (excluding travel by an aeroplane) shown below :—

By railway	250 miles.	
By ocean steamer	200 miles.	or any longer time actually occupied in the journey.
By river steamer	80 miles.	
By motor car or bus	80 miles.	
By horsedrawn conveyance	60 miles.	
In any other way	15 miles.	

(3) Joining time shall count as time spent on duty.

(4) An employee in respect of the joining time shall be entitled to the pay and allowances which he would have drawn if he had not been transferred, or the pay and allowances which he will draw on taking charge of his new post, whichever are less.

SECTION IV.

Special cases of Transfer.

335. We shall now consider a peculiar class of cases, namely, where an employee is transferred from a certain area to another area involving a lower scales of pay and allowances. An employee serving in the city of Bombay, for instance, may be transferred to an area of class II or class III and the question that arises is whether it would be right to deprive him suddenly of an appreciable portion of his emoluments when the transfer is necessitated merely in the interests of the bank. We think that in such cases it would be proper to give the employee some time to adjust his affairs to the altered situation. With this object we give the following directions :

Where an employee is transferred from an area of class I to one of class II or III or from an area of class II to one of class III,

(1) if the transfer be made at his own request his pay and allowances, etc., will be regulated by the scale of pay, etc., applying to the area to which he is transferred ;

(2) if the transfer be not made at his request he shall be entitled to add, as personal pay, to the pay applicable to him in the new area—

(a) for the first 45 days at the new station, the difference between the pay he was drawing before the transfer and the pay applicable in the new area, and

(b) for the next 45 days, one-half of such difference.

597

CHAPTER XXVI

PROMOTIONS

SECTION I

PROMOTIONS

336. In this Chapter we propose to deal with "rules regarding promotions" and "waiving of age restrictions for promotion to supervisory grades." (Items 31 and 24 in Schedule II).

337. *Promotions.*—Under this head the following is a list of the main demands made:

(1) posts like those of jamadars, havaldars, messengers, etc., should be filled up by promoting members of the subordinate establishment;

(2) members of the subordinate establishment should be eligible for posts in the clerical establishment; they should be promoted to such posts if they pass the matriculation examination;

(3) all vacancies in the officers' grades and supervisory grades, or a large percentage of them, should be filled by promotion from the clerical staff;

(4) for making promotions seniority should be given the highest consideration, after which merit or efficiency and educational qualifications should be preferred to other considerations;

(5) before vacancies in the higher grades are filled the unions should be consulted:

(6) vacancies which may be filled by promotion should be duly notified, applications invited and candidates selected by holding impartial examinations;

(7) the system of having "trainees" adopted by the Central Bank of India, Limited, for recruitment to higher posts, being against the interests of the existing employees, should be abolished;

(8) sometimes a clerk is promoted to an "officer's" post, but with less pay and allowances than he drew before; before such promotion is made his consent should be obtained;

(9) sometimes an officer is appointed with less pay than those serving under him; such appointments should not be made, as they are resented by those working under such officers and are subversive of discipline and good administration;

(10) rules should be made so as to prevent or minimise favouritism in the making of promotions and filling of vacancies.

The banks are generally opposed to any directions being given as to these matters and contend that they should be left to their discretion.

338. As to demand (1) we direct that in filling such a post the management should first see whether any member of the existing staff is suitable and appoint an outsider only when none of them deserve to be promoted to the post in question. As to demand (2), a similar demand was dealt with in a Bombay award (Premier Construction Company, Limited, and others *v.*

their workmen)[1] in this way: "The question of minimum qualification required for appointment to the clerical post would naturally arise in such cases and although there is nothing wrong in principle in promoting a suitable lower grade staff employee to the clerical grade, the matter cannot be the subject of any hard and fast rule and it must be left ultimately to the Management with the recommendation that members of the lower grade staff should be considered for appointment to clerical grade provided they answer the qualifications and are otherwise suitable and have the necessary merits for such appointment." Similar observations are to be found in the Divatia award (Paragraph 48). With respect we agree with these observations and direct accordingly. Demand (3) is opposed by the banks on two grounds: (*a*) that posts in the grades above the clerical fall outside the scope of the Tribunal's jurisdiction and (*b*) that in general the eligibility of suitable members of the clerical staff is as a matter of fact considered in filling vacancies in the higher posts, but selection in such cases must be left entirely to the judgment and discretion of the management who are responsible for the proper and efficient administration of the bank's affairs. The first ground is sought to be supported by the following observations of Divatia J. in the Bombay Banks Award (Paragraph 48): "The demand that the officers' and higher posts should be filled in by promotion from among the senior clerks cannot be granted because this Court has no power to make any award about the selection of men to the officers' and higher posts as the dispute is confined to clerks and low paid employees." In respect of a similar demand about vacancies in the "higher and/or covenanted grades" in a dispute between the Imperial Chemical Industries (India), Limited (Dyes Department) and its employees in Bombay[2] the same learned Adjudicator contented himself with a recommendation that the claims of the existing employees should not be overlooked when appointments to such grades are to be made.

339. It seems to us, however, that the members of the clerical staff having a very real interest in the methods of filling the posts in the grades next above their own, such methods can be said to be "connected with the employment" and "the conditions of labour" of themselves and of others eligible for such post within the scope of the definition of "industrial dispute" in the Industrial Disputes Act, and that the employees having thus raised a valid industrial dispute on the subject-matter of their demand, this question falls within the scope of our jurisdiction. On a demand for promotions "from clerical and cash department grade to staff assistant and other higher grade vacancies", Mr. B. B. Singh in his award decided that such promotions "should be allowed on the basis of merit-*cum*-selection but not to the exclusion of outsiders," no question as to jurisdiction on this question having been apparently raised before him or before the Banks Conciliation Board appointed by the U.P. Government after the publication of the said award, Mr. R. Gupta also dealt with the question of "Promotion to Staff Assistants' grade and other higher posts as and when vacancies occur" without (so far as his award shows) any such question having been raised before him. Similar remarks apply to Mr. S. K. Sen's award on the dispute between the Central Bank of India, Limited, and its employees in West Bengal outside Calcutta. Similar demands have been dealt with in awards relating to other industrial concerns, *e.g.*, those relating to the Engineering Industry in West Bengal and the Premier Construction Company, Limited, and others at Bombay. As to

1. 1949 I.C.R. (Bom.), p. 703 at p. 733
2. *Bombay Government Gazette*, Extraordinary, November 19, 1947, page 4375A.

the second objection urged by the banks the fact that the Central Pay Commission thought it necessary to enter into elaborate discussion on the subject at pages 63 to 67 of their Report, clearly shows that the matter is not free from difficulty and has to be regulated according to certain principles and that real grievances may arise if it be left entirely to the unfettered discretion of the employer. It may not be possible for us, in a matter of this kind, to give clear-cut directions and all that is possible may be merely to enunciate principles for which precise and objective tests or standards may be lacking.

340. We may at once say that we are not in favour of filling vacancies in the higher grades exclusively by promotion or even of reserving a specified percentage of such posts for promotion. At the back of the employees' claim is the feeling that some of them are competent enough to do the work assigned to the higher grades and that such opportunities to rise to those grades as they deserve are often withheld from them. On this point the Central Pay Commission's recommendation is that "the claims of competent men already in the service should be recognised and satisfied to the fullest extent possible. If such men are promoted to responsible posts fairly early in their career, they will bring all the benefits of practical experience without the disadvantages entailed by a prolonged course of routine work." We would emphasize the words in the above passage "to the fullest extent possible." If such promotions are made whenever possible they would not only serve as inducement to the members of the clerical staff to put forth the best endeavour of which they are capable but they would also demonstrate, in a manner not otherwise possible, the desire of the management to recognise merit wherever it exists and would thus go a long way to improve the relations between the workmen and the management by relieving the workmen's minds of suspicions regarding the management, at least to a very desirable extent. We, therefore, give the direction that whenever a post falls vacant to which are attached emoluments higher than those attainable under the ordinary pay scale and allowances applicable to the clerical staff the management shall first consider whether it can be filled by promotion from such staff. We further direct that in such cases the following procedure recommended by the Central Pay Commission shall apply: "Even when direct recruitment to a particular post is decided on, deserving men already in service should be enabled to compete for such recruitment, by a reasonable relaxation of the rule relating to age limit and other restrictive conditions." For the purpose of such relaxation we direct that wherever such restrictions and limitations exist or are complained against the banks concerned shall examine them and relax them to the extent possible within a period of six months from the date of the publication of our award.

341. Demand (4) raises the familiar controversy between seniority and merit. On this subject the following observations of the Central Pay Commission are relevant:

"The purpose of promotion is not merely to give the public servant more pay, but also to give him a more responsible position and more extensive authority. The question must, therefore, be judged both from the public interest and from the interest of the individual concerned. The principle of seniority assumes that all members of a particular grade are equally fit for promotion. Such an assumption may not do much harm in the lower grades of the service; but it cannot be generally accepted when dealing with promotions in or to the top grades. The principle of seniority has, no doubt, the advantage that its operation is very nearly automatic and it avoids the need for making invidious distinctions between one person and another and the embarrass-

ment of placing a young officer over the head of an older one. For many situations, especially those in respect of which long familiarity with office work is itself adequate training, the rule of seniority may be generally followed. But, even in this category of posts, occasional instances of exceptional promotions of deserving persons would be an inducement of greater endeavour, provided of course that care is taken to guard against all suspicion of nepotism. In the higher grades of the service, considerations of fitness must have precedence over the claim of seniority. The task of selection may not always be easy or agreeable and the possibility of mistake, unfairness or injustice cannot be wholly excluded, but the situation has to be faced."[3]

We agree with these observations and hold that the demand is not based on sound principle. In cases of promotions to the higher grades and to other important posts involving responsibility considerations of merit and fitness should have precedence over the claim of seniority, seniority being a principal criterion in other cases of promotion.

342. Demand (5) is that before vacancies in the higher grades are filled the union should be consulted. We have already provided that in some cases a vacancy will have to be notified. On such occasions the unions concerned will have an opportunity to make their recommendations; and we have no doubt that such recommendation will be duly considered. Beyond this we see no need for making any further provision on this subject. As to demand (6), we do not think it necessary to direct that vacancies which may be filled by promotion shall be notified or applications therefor invited. As to the holding of examinations, a bank should be free to use this method of recruitment or promotion if it thinks that it would serve a useful purpose, but we are not inclined to give a general direction on this question. The Central Pay Commission held as unpracticable the suggestions that selection for purposes of promotion should be made (*a*) by an independent outside agency, or (*b*) in collaboration with the representatives of the Services or union concerned; and we wish with respect to associate ourselves with that opinion as well as with the following observations of the Commission:

> "An employee's fitness, capacity and attention to duty are largely questions of discretion and judgment to be determined by his superior officers. An outside agency can scarcely be as competent in the determination of merit as the officers under whose observation employees have been doing their work. In large Departments the head cannot be expected to acquaint himself at first hand with the work of each of his subordinates. In such circumstances, he must act in consultation with departmental officers who themselves have personal knowledge of those working in the department."[4]

343. As to demand (7) regarding the system prevailing in the Central Bank of India, Limited, of having "trainees", we cannot direct that it should be abolished; in all probability it is proving useful. The system will now have to be worked in the light of our observations and directions; we would merely add a recommendation that the management should consider the advisability of training promising members of the clerical staff along with the regular "trainees."

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3. Page 64.
4. Page 65.

344. Demand (8) appears to us to be reasonable and we direct its acceptance. As to demand (9) it may not perhaps be always possible to avoid the grievance underlying it; but on the whole the principle on which it is based is sound and we recommend that it should be given effect to whenever possible. As to demand (10), it is not, in our opinion, possible to frame useful rules for the prevention of favouritism, but we wish to draw the attention of the bank authorities to our observations on the subject under "Method of recruitment." We would remind them that it is necessary, in the interests of the banks, to avoid not only nepotism and arbitrariness in making appointments and promotions but also all suspicion thereof.

SECTION II

Age Restrictions

345. In this section we shall consider the question of the waiving of age restrictions for promotion to supervisory grades (item 24 in Schedule II).

346. That the subject is not important is apparent from the fact that several of the unions have made no reference to it in their demands; those who have expressed themselves against there being any age restrictions have urged that the considerations that should weigh with the management are merit and experience, apart from seniority. It was alleged that in the Imperial Bank of India promotion to supervisory grades was not given after an employee had attained the age of 35 years, but this was denied by Sir Jamshedji Kanga on behalf of the bank, Mr. Beynon on behalf of the Chartered Bank of India, Australia and China admitted that there was such a rule in the said bank but said that it was not always strictly adhered to. In the written statement filed by the Imperial Bank of India we find it stated that "in deserving cases the employee's age is not an absolute bar to promotion"; this statement suggests that after attaining a certain age, an employee is not ordinarily considered eligible for such promotion, an exception being made in deserving cases.

347. We do not think that it is necessary for us to say anything on the subject before us more than what we have said in general as to promotions. There may be an advantage in the case of some of the higher posts in excluding elderly men: the Central Pay Commission, for instance, have said after referring to the claims of competent men already in service, "If such men are promoted to responsible posts *fairly early in their career*, they will bring all the benefits of practical experience," etc. The guiding principles in this matter must be the same as are to be found in Section I of this Chapter.

602

CHAPTER XXVII

TAXES AND FINES

SECTION I

INCOME AND PROFESSIONAL TAXES

348. In this Chapter we shall deal with the following questions :

(1) Whether income and professional taxes payable by employees should be paid on their behalf by banks, and

(2) Utilization of proceeds from fines.

(Items 20 and 21 in Schedule II)

349. On the first question, nearly all the unions have demanded that the said taxes should be wholly paid by the banks. The United Commercial Bank Employees' Association, Calcutta, has suggested such payment in cases of employees whose salary does not exceed Rs. 500 per month. It is said that at present income-tax is being paid on behalf of their employees by the National Bank of India, Limited, and by the Hongkong and Shanghai Banking Corporation in its Calcutta branch and that the Chartered Bank of India, Australia and China paid the income-tax on its employees' salaries up to 1941. It is also said that the Imperial Bank of India pays the income-tax payable by its higher officers in its London office and it appears that the Bank of Baroda contributes a portion of the income-tax payable by its employees. The argument in favour of the income-tax being paid by the banks is based on the practice of the banks to give dividends free of income-tax to its shareholders and of certain banks to pay all taxes leviable under the Income-tax Act on the emoluments drawn by their high officers. As to other taxes, it has been stated that in the Punjab Professional taxes are imposed by the district boards and that there are such taxes also in certain notified areas.

350. The claim on the part of the employees was resisted by all the banks. The opposition to the demand is, in our opinion, justified. It is noteworthy that no general demand of this sort was ever put forward till now by any of the employees in the disputes which have formed the subject matter of decisions by various Tribunals in different parts of the country. Further, it stands to reason that persons who earn income above a certain minimum must contribute their own quota to the resources of the State ; and it is to be remembered that taxes paid by employees have entered into the calculations of Shri Subramanian on which the pay scales, etc., laid down by us have been based. As a matter of fact, the minimum exempt from income-tax has been raised this year to Rs. 3,600 and this means that only those whose income exceeds Rs. 300 per mensem would have to pay income-tax. Their number in the clerical grade will be comparatively small.

351. As regards professional taxes, in the places where they are imposed all persons carrying on any of the taxed professions within the limits of the municipality or other local body concerned have to pay them in return for which certain amenities are provided by such bodies ; and there seems to be no good reason why bank employees should seek to escape such burdens as

a special case. The argument that in several banks the higher paid officers get their salaries free of income-tax or that other taxes payable by them are paid by the bank, can be met by the argument that such cases are generally governed by the specific contracts of employment and that it would be more legitimate to demand the abolition of the privileges enjoyed by such officers rather than to demand their extension.

352. We, however, regard the practice on the part of some banks of paying the income-tax and other taxes on the emoluments of highly paid officers and not paying them in the case of the other employees as a serious anomaly, and in our opinion the sooner such anomaly is ended the better. As to future contracts in respect of such officers we direct that they shall contain no clause throwing the liability for the payment of such taxes on the banks. We think that we have jurisdiction to give such direction as it affects a matter which has a most vital connexion with the question of workmen's opinion of the adequacy of their own earnings in the light of a bank's capacity to pay and which thus is intimately connected with the problem of the maintenance of industrial peace.*

353. As regards the banks which are now paying income-tax or professional taxes on behalf of all their workmen, there being no anomaly in the practice, we do not wish to interfere with it; but in the cases in which such taxes are being paid on behalf of only some of the workmen liable to pay them we direct that the anomaly shall be rectified with the least possible delay.

SECTION II

Proceeds from Fines

354. As regards the question of the utilization of the proceeds from fines, most of the unions have expressed themselves against the imposition of such fines, one or two having contended that such imposition is beyond the power of the banks. Some of them have demanded that the proceeds from fines should be utilized for social amenities for the employees' benefit and one union has suggested their use for their "moral uplift". The banks have said that their power of inflicting punishment in suitable cases by way of fines should not be interfered with. We have made provision for the imposition of fines in certain cases of disciplinary action. Cases of imposition of fines, however, appear to be few and infrequent, there being no demands on this question by the Imperial Bank of India Staff Association owing apparently to the paucity of such cases and the total amount of fines realised by this Bank of Baroda during the years 1945 to 1949 having been only 52-8-0. Following the provisions in sub-section (8) of section 8 of the Payment of Wages Act, 1936, we direct that all fines realised shall be applied to purposes beneficial to the persons employed in the bank or the establishment concerned.

* Subject to the minute of the dissent by Mr. Chandrasekhara Aiyar: (See Chapter X).

604

CHAPTER XXVIII

COMPENSATION TO REFUGEE EX-EMPLOYEES, ETC.

SECTION I

COMPENSATION TO REFUGEE EX-EMPLOYEES

355. In this Chapter we propose to deal with the following matters:

(1) Whether cash compensation is payable to employees of branches situated in Pakistan who have had to come away to India and have not been employed in the branches in India.

(2) Should bank pensioners be entitled to accept employment after retirement with or without the permission of the banks from which they draw their pensions?

(3) Right to existing terms of service where they are more liberal than those of the award of this Tribunal.

(4) In what manner and to what extent do the decisions of the Tribunal require modification in the case of employees of banks under liquidation or moratorium?

(Items 27, 28, 30 and 38 in Schedule II).

356. On the subject of compensation to refugee employees who are still unemployed, the demands made may be summarised as under:

(1) their full pay and allowances for the whole period of enforced unemployment should be paid and every attempt should be made to absorb them into service; when they are so absorbed they should not suffer from any break in service;

(2) they should be paid two years' salary or wages, with all allowances;

(3) they should be paid one year's salary or wages, subject to a minimum of Rs. 500;

(4) they should be paid at double the gratuity rates;

(5) the amounts at their credit in the provident fund including the bank's contributions, as well as any security amounts furnished by them, with interest, should be paid to them, with no deduction;

(6) compensation for any injuries sustained in the course of their leaving Pakistan should be paid; where an employee has died in the attempt to leave Pakistan suitable compensation should be paid to his heirs.

357. The banks say that they have done their best to help such refugee employees by giving them posts in India, monetary relief, advances, etc., that some of them are not traceable, but that some have of necessity had to be discharged, there being no means of absorbing them into service or the employees concerned being unable or unwilling to go to places where vacancies existed. The Bharat Bank, the Bengal Central Bank, the Punjab National Bank, the Central Bank of India, Allahabad Bank and the Imperial Bank of India are the banks that are primarily concerned with this question. They have resisted the demand for cash compensation equivalent to as much as two years'

pay and allowances. Of course it goes without saying that if they were entitled to any provident fund or gratuity or to other benefits on the dates they had to come away from the branches in Pakistan, they should get them without question. We direct that in all such cases the full amount of the bank's contributions to the provident fund shall be paid by the bank, as well as any security amounts which an employee might have deposited with the bank, with interest at 4 per cent per annum, within three months from the date of the publication of this award. In the case of such employees as have died while leaving, or as the result of any injury received while leaving Pakistan, we direct that their heirs, executors or assigns shall be paid one month's pay for each year of service, subject to a minimum of 6 months and maximum of 15 months, within three months from the date of the publication of this award. In the case of those who have had to remain unemployed, not of their own volition but by force of circumstances, it appears to us fair and equitable that they should be given some compensation for the hardships and privations they had to suffer for no fault of their own. We think that the payment of six months' pay and allowances to every such employee would meet the ends of justice and serve to alleviate suffering, at least to some extent. We accordingly, direct as follows: In the case of such employees, excepting those whose services have been dispensed with for misconduct, they shall be paid, within three months from the date of the publication of this award cash compensation equivalent to six months' pay and allowances, calculated from the date on which they had to leave Pakistan. We further direct that in case such persons or their heirs, etc., have received any gratuity under the existing rules or provisions the amount of the said gratuity shall be deducted from the amount they would be entitled to under the above direction, and that if the amount of the said gratuity be greater than what we have directed to be paid, such gratuity, and not the amount due under such direction, shall be paid within the period mentioned above.

358. Before parting from this issue, we must advert to a special point with reference to the Imperial Bank of India sought to be made by Mr. Jyoti Ghosh. He stated that when certain employees in the branches of the said bank in Pakistan wanted to be transferred to India the bank refused to consider their request, and he urged, therefore that the said bank should be made to pay full compensation at a reasonable rate for the entire period of their enforced absence from duty in case they had to leave Pakistan. The bank's reply is that what such employees wanted would have resulted in the wholesale closure of many of its branches in Pakistan and would have created a surplus staff a large part of which could not have been employed elsewhere. We are unable to hold that any distinction between the Imperial Bank of India and any other bank, in the matter of treatment of their employees, is possible or necessary; and all employees who were forced to leave Pakistan owing to conditions prevailing in that country should, therefore, be dealt with in accordance with the directions given above.

SECTION II

Permission for Pensioners before Re-employment

359. The second question to be considered in this Chapter arises out of the insistence by such banks as have pension schemes on pensioned employees taking their previous permission for accepting employment elsewhere. The

reason given by the banks for such a rule is that they should not engage themselves in a competing institution as it might lead to divulgence of confidential matters. This appears to us to be a needless apprehension. The employees with whom we are concerned are not generally in charge of top secrets of the bank; they largely do work more or less of a routine nature. Persons in active service in a bank having equal knowledge of the affairs of the bank are no doubt generally deterred from disclosing it outside by the fear of disciplinary action. But employees who retire earlier than the full period which would qualify them for pension and retired employees in banks which have no pension scheme are even now under no obligation to seek permission for re-employment; they go away getting their gratuity, provident fund, etc., and are free to seek engagement in other banks or institutions. Nor is such permission necessary in the case of an employee who is dismissed. In our opinion the imposition of a condition that pensioners alone should obtain permission before seeking engagement elsewhere is unnecessary and is likely to result in hardship. We direct, accordingly, that where such restrictions now exist they shall be cancelled or abolished.

SECTION III

Effect on Existing Terms of Service

360. We shall now deal with the question as to the right to existing terms of service where they are more liberal than those of the awards of this Tribunal. A provision as to such a right is often inserted in awards and it corresponds to some extent to provisions like the following in some of the local Shops and Establishment Acts: "Nothing in this Act shall affect any right or privilege to which any employee of any shop or commercial establishment may be entitled on the date on which this Act begins to apply to such employee under any other law for the time being in force, or under any award, agreement, contract, custom or usage which may be in force on that date if such right or privilege is not conferred upon him by this Act". (Section 5 of the U. P. Shops and Commercial Establishment Act). After the publication of Mr. B. B. Singh's award the Government of the United Provinces issued an order wherein it was stated, "The scales of pay prescribed by the adjudicator under issue No. 2 of the Award being the minimum permissible, if any employee has been in receipt of a higher salary or a salary in a better grade (*i.e.*, with a higher starting point, a higher rate of increment or a higher maximum) and/or allowances prior to the enforcement of the said award, then he shall continue to draw the higher salary or get the benefit of the better grade and of the allowance or allowances aforesaid." The Chairman of the U. P. Banks Concilation Board, in his Report said, "While dealing with the scale of salaries he (Mr. B. B. Singh) made it clear in para 15 of his award that what he was prescribing was the minimum. On a perusal of his report as a whole, I am of opinion that he intended that what he was prescribed under various issues were all minimum. He was appointed to give relief to the employees and it is difficult to believe that he intended to prescribe any term of employment for them which was less favourable than what was in force prior to the commencement of his Award. It follows from this that if in any bank an employee covered by his Award, as herein clarified, was in the receipt of higher pay or allowances than that prescribed by Shri B. B. Singh, he would continue to receive at his option the higher pay or allowances whether he was permanent or temporary. But I want to make it clear that the principles mentioned above are applicable only to an individual term of

607

employment taken as a whole and it is not open to an employee to split it up and accept one part of it which is advantageous to him and reject that which is disadvantageous." In the Bombay award Mr. Justice Divatia provided that "all existing rights, privileges, advantages, amenities and/or such other conditions of service that are already being enjoyed by employees or group of employees as are not covered or varied by this award shall remain uneffected by this award".

361. In an award on a dispute between the United Motors (India) Limited, Bombay and their workmen one of the demands was: "Nothing contained in these demands should adversely affect or take away from a workman or groups of workmen any privileges, advantages or amenities already vested in or enjoyed by such workman or groups of workmen". The Chairman of this Tribunal who adjudicated the said dispute observed: "The language used here is somewhat vague and can hardly be said to embody any concrete demand. No direction, therefore, on this part of the demand seems necessary. But it is hoped that the Company will give effect to this award in the sipirit sought to be expressed in this paragraph[1]". On a similar demand made in a dispute between Roneo Limited, Bombay and their workmen, Mr. D. G. Kamerkar remarked: "As I have observed in other awards, such a general demand is vague in its implications and cannot be adjudicated upon unless concrete instances of predjudice are brought to the Tribunal's notice. No award can therefore be made in respect of such a demand, either way[2]".

362. The subject is not free from vagueness or difficulty. It is certainly not the intention of this award to cut down any of the existing rights and privileges of the employees. No demand for the reduction or curtailment of the existing benefits enjoyed by them is before us. But the matter cannot be disposed of in this simple fashion. For instance, in fixing the scales of pay several elements have been taken into account such as house rent, children's education, medical aid and attendance, and we have given special directions regarding the expenses that may be incurred on account of an employees' illness. If a bank has been paying a special allowance on account of any of these items, an employee will not be entitled to claim its retention except to the extent, if any, specifically provided in this award. But there may be allowances of a somewhat unusual kind in particular places, for instance, a special medical allowance for malarial places or a "scarcity allowance" for places where acute scarcity prevails. Certain banks have contended that such allowances are being given *ex gratia*, that they are of a temporary nature and that they should be allowed to be withdrawn when necessary. The Bank of Baroda has pointed out that the hours of work prescribed for its staff are less than those demanded and contended that it should be free to increase such hours to such number as may be laid down in our award. This contention has appeared to us to be sound and we have made a specific provision to this effect. But there may be matters on which our award is silent. Ordinarily if such matters relate to amenities or benefits which can be regarded as having ripened into rights, and if our award has not taken them into account even by necessary implication, such amenities and benefits should as a rule continue, and we direct accordingly. But there may be difficult cases. For instance, the Hongkong and Shanghai Banking Corporation have been making contributions to their employees' provident fund to the extent of 20% of their pay; and the Company have asked that they may be allowed to reduce the rate of their contribution if a large burden is found to be

1. 1949 I.C.R. (Bom.) 253, page 267.
2. 1949 I.C.R. (Bom.) 897, page 909.

placed upon them by our award. The Allahabad Bank, except in Uttar Pradesh, pays interest to its provident fund at the rate of 6 per cent, its contribution amounting to 6½% of an employee's pay; it has asked that if under our award the bank's contribution be increased it should have the option of reducing the rate of interest. The National City Bank of New York engages its employees at more liberal rates than other banks, pays dearness allowance at 50 per cent of an employee's pay (with a minimum of Rs. 50 per month) and contributes to the provident fund at the rate of 10 per cent, but it has made no provision for gratuity. It has asked that should it be required to make such a provision it should be left free to curtail some of the existing benefits enjoyed by its employees, within the limits of our award. This bank has sent us a memorandum suggesting a method of adjusting retirement benefits based on a form of union demand in the United States of America known as the "package" system[3]; we have not been able to accept the suggestion, but the question posed by the bank still demands an answer.

363. As regards monetary benefits enjoyed by the employees we feel that in no case and at no stage of an employee's career should his total emoluments be less than the totality of such benefits under the existing scheme, rules or awards (except awards as to interim relief), and that subject to this principle a bank may be allowed to adjust such benefits in the light of the requirements of our award. Provided that the benefits immediately enjoyed and not deferred (like the bank's contribution to the provident fund) are not reduced below the existing level. We direct accordingly. As to benefits like the provision of a canteen or a club-house which cannot be evaluated in precise monetary terms and which are not specifically referred to in our directions, the general direction that we have already given regarding matters on which our award is silent will apply. It is almost impossible, in the nature of things, to be more precise or explicit on this question. We conclude this discussion by expressing the hope that the banks will give effect to our award in the spirit underlying all just demands on this issue. We wish to make it clear that in applying the principles enunciated in the last paragraph nothing laid down in any of our awards relating to interim relief should be taken into consideration, for the operation of those awards is limited strictly to the period up to the date or dates on which this award will come into operation, and no part of such awards is intended to create of its own force any lasting right or term of service. There is another matter regarding which we may here make our position clear. In the statements of claims submitted by different unions and individuals there are a number of claims with which this award has not specifically dealt. In such cases it would, in our opinion, be proper to hold that such claims have not been adjudicated upon by this Tribunal in any manner.

SECTION IV

Banks under liquidation or moratorium

364. We next proceed to the question, in what manner and to what extent do the decisions of the Tribunal require modification in the case of employees of banks under liquidation or moratorium? (Item 38 in Schedule II).

365. The orders of the 13th June 1949 and the 28th September 1949 mention certain banks in liquidation, under moratorium or working under schemes of arrangement; certain other banks mentioned therein are stated to be defunct, to have closed their doors, to have applied for schemes of arrangement, to have

3. See Appendix VII.

petitions pending before the High Court for winding up or to be in a position described as "not known".

366. The question raised specifically for our consideration concerns banks in liquidation or under moratorium; but it may be necessary for us to consider the position of some of the other classes of banks mentioned above also. So far as banks in liquidation are concerned, we are doubtful whether we have any jurisdiction over them in view of section 171 of the Indian Companies Act, which provides:

> "When a winding up order has been made, or a provisional liquidator has been appointed, no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose".

The expression "other legal proceedings" appears to be wide enough to embrace the proceedings of this Tribunal. No arguments have been addressed to us by or on behalf of any party to show that the provision of the said section is not relevant or does not apply. Under section 168 of the Indian Companies Act a winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up; and it has not been suggested by any party that any of the cases of liquidation we are concerned with is one of voluntary liquidation. One of the advocates appearing on behalf of some of the unions undertook to apply for leave of the Courts concerned and inform us of the result; but he failed to give us any information on this point at any of the subsequent hearings. There is also the difficulty involved in the provision in section 172 of the Indian Companies Act that a winding up order operates as notice of discharge to the servants of the company, except when the business of the company is continued; and we have no information as to whether the business in the case of any of the banks concerned is being continued; even in such cases a notice of discharge may be given pursuant to the winding up order (*English Joint Stock Bank, ex parte Harding* [4].) and on this point also we have no information. We have, therefore, decided that our award should be deemed not to apply to such banks.

367. As regards the banks under moratorium, they are regulated by section 37 of the Banking Companies Act, which is based on section 277N of the Indian Companies Act. The Court may thereunder stay all actions and proceedings against the company for a maximum period of six months on such terms and conditions as it may think fit and proper, so that it either rehabilitates itself within such period or goes into the stage of winding up, voluntarily or compulsorily. Information as to what has happened to the banks described as under moratorium, after the period fixed therefor, is also lacking. We, therefore, direct that in case any of the banks described as under moratorium be working normally at the date when our award becomes operative our directions shall apply thereto and that it shall not apply to any such bank during the period of moratorium.

368. We may next consider the position of such banks as are under schemes of arrangement or regarding which it has been stated that applications for schemes of arrangement are pending. According to the schedules to the Government orders of reference there are 20 such banks. Five [5] out of these banks,

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4. (1867) 3 Eq. 341.
5. The New Bank of India, Limited.
   The Traders' Bank, Limited.
   The Lakshmi Commercial Bank, Limited.
   The First National Bank, Limited.
   The Punjab and Kashmir Bank, Limited.

which are working under schemes of arrangements, are members of the Displaced Banks Association which has urged that their members should be exempted from the provisions of our award. Such schemes are sanctioned by the Court under section 153 of the Indian Companies Act, and such a scheme generally operates to discharge the company and its contributories from liability other than that imposed by it. It has been held that "arrangement" is a word of wide import and is not limited to something in the nature of a compromise. It has been stated on behalf of the banks which are working under schemes of arrangement that such schemes were generally necessitated by the loss of large assets in Pakistan and the liabilities not having decreased in like proportion. We have looked into the schemes supplied to us and shall take one of them as typical, namely, the scheme sanctioned in respect of the Lakshmi Commercial Bank, Limited, Delhi, by the High Court of the East Punjab on the 19th March, 1948, and give its important features. They are as follows:

369. Deposits as on 26-9-1947 are not to carry interest; they are to be reduced by 25 per cent, 50 per cent of the balance of 75 per cent being payable within two months of the scheme being sanctioned and 50 per cent within three years of the date of such sanction; the amount made available by the reduction of deposits are to be taken to a special Reserve Fund for bad and doubtful debts, etc., the assets and liabilities of the bank as on 31-12-1952 are to be evaluated and any surplus in such Reserve Fund to be distributed amongst the depositors; from the date of the sanction the bank is to be entitled to carry on its normal banking business; on the date of the sanction a sum of Rs 5,00,000 is to be transferred out of the bank's assets to a separate Reserve Fund, the balance of the Assets being treated as a Closed Fund as a security for the discharge of the liabilities of the bank to its old depositors; all the assets of the bank coming into existence after the date of the sanction along with the separate Reserve Fund are to be security for the bank's liabilities in respect of business transacted after the date of the sanction; and all expenses incurred by the bank are after the sanction to be apportioned between the Closed Fund and the assets and the separate Reserve Fund described above in proportion to their total average working capitals.

370. These provisions show that the effect of such schemes of arrangement is to keep alive the banks concerned in an attenuated form and that the Closed Fund created as a security for the discharge of the bank's liabilities to its old depositors and the special Reserve Fund created for bad and doubtful debts, etc., are kept separate from such funds and assets as are utilised for the banking business which the bank is permitted to carry on. It will, further, be seen that under the scheme, all the expenses incurred by such a bank are to be apportioned between the Closed Fund and the assets and the separate Reserve Fund in proportion to their average working capitals. This means that if the expenses of one of the funds, *e.g.*, the Closed Fund, are heavy in proportion to those of the other fund, a part of the former's expenses will have to be borne by the latter. It has been said that the banks have now been compelled to carry on such business with "a skeleton staffs" and that time should be allowed before these institutions should be treated as normally working banking companies. The balance sheets of the five banks working under schemes have been furnished to us. Though they are not all for the latest year they show that these banks are finding great difficulty in carrying on normal banking operations. However, it is not easy for us to differentiate between them and other banks, specially many of the non-scheduled banks, which may also be working under difficulties which may not have come to our notice. It is, however, to be noted that the Government of

India have felt the need, from time to time, of giving the twelve banks[6] which are members of the Displaced Banks Association special exemption from certain provisions of the Banking Companies Act[7] the period of such exemption being generally three years. The notifications indicate that Government are of opinion that such banks deserve to be given favoured treatment for such period. The following is a quotation from a report[8] of a speech made by the Finance Minister: "Earlier in the debate one member had drawn his attention to the case of the displaced banks from the Punjab and he had been asked what the Government would do in regard to them. The hardships to which these banks were put were obvious. It was a case in which these banks, uprooted from their homes, were placed in a position where it would be extremely difficult for them to conform to the provisions of the Bill. Yet it was his duty as Finance Minister to afford them protection in view of difficulties in which they were placed for reasons entirely beyond their control". In view of these considerations it seems to us that it would not be right for us to fix for the banks which are under such schemes of arrangement anything but the lowest rates (for each class of areas) in the scales laid down for class C banks. We direct, therefore, that so far as the banking business carried on by such banks is concerned, those of their employees who are engaged for the purpose of such business shall be entitled to the benefit of only the scales laid down for class C banks in respect of new entrants for the period for which the special exemptions given by Government apply, and that thereafter our award shall apply to such banks in full.

371. There remain five other classes of banks not appearing to be working normally and described thus in the orders of reference; "latest position not known" "reported to be defunct", "prohibited from accepting fresh deposits", "defunct though its affairs are not wound up formally", "stated to have closed its doors from 15th September 1948". Our award will apply to such of those banks as are still transacting the business of banking.

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6. (1) The New Bank of India, Limited.
   (2) The Traders' Bank, Limited.
   (3) The Lakshmi Commercial Bank, Limited.
   (4) The Punjab and Kashmir Bank, Limited.
   (5) The Prabhat Bank, Limited.
   (6) The Chawla Bank, Limited.
   (7) The Punjab Commerce Bank, Limited.
   (8) The Frontier Bank, Limited.
   (9) The First National Bank, Limited.
   (10) The Commercial Bank of India, Limited.
   (11) The National Bank of Sialkot, Limited.
   (12) The Colony Bank, Limited.

7. Government of India, Ministry of Finance, Notification Nos.:
   (1) F.4(46)-F.1/49, dated New Delhi, the 13th March 1949.
   (2) F.4(46)-F.1/49, dated New Delhi, the 3rd August 1949.
   (3) F.4(46)-F.1/49, dated New Delhi, the 5th September 1949.

8. *The Hindustan Times* of the 17th February 1949.

612

CHAPTER XXIX

WORKS COMMITTEES; STANDING ORDERS

372. In this Chapter we shall deal with the following matters: "Works Committees—should they be established or not?" and "Standing Orders regulating the conditions of service of bank employees and the procedure in making amendments to them" (item 32 and 36 in Schedule II).

373. As to Works Committees, we believe that Works Committees such as are referred to in section 3 of the Industrial Disputes Act, 1947 are meant; they are to be constituted in the manner prescribed in Part V of the Industrial Disputes (Central) Rules, 1947. Under sub-section (2) of section 3 of the Act "it shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and to that end to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters." The Federation of Bank Employees, Bombay, have made no demand regarding Works Committees and the Imperial Bank of India Staff Federation have dropped their demands on this item. Mr. Mehrota for the U.P. Bank Employees' Union has asked for Works Committees of a kind different from such as may be constituted under the Act; all other employees' representatives and advocates also, except Mr. Dudhia, who has appeared on behalf of three unions at Ahmedabad, Surat and Baroda, have expressed themselves against Works Committees. The banks, too, in general, have opposed the establishment of such Committees. Sir Jamshedji Kanga on behalf of the Imperial Bank of India has pointed out that under section 3 of the Act it would be for the appropriate Government to require the employers to constitute Works Committees in the prescribed manner. That is no doubt true; but the Tribunal has been asked, it would seem, to express its opinion whether Works Committees should be established or not. In view of the almost universal opposition we do not think that any works committee such as may be constituted under the Act should be constituted or established. The unions appear to have felt that their freedom of action and decision may be hampered by such committees being established and the banks may have felt that they would be difficult to work and would interfere with the spheres of their responsibility and discretion in an undesirable manner.

374. As to Standing Orders, we have already dealt with the following matters:—

(1) Leave rules (Chapter XXI),

(2) Hours of work and overtime (Chapter XXII),

(3) Method of recruitment, terms and conditions of service and procedure for termination of employment or for taking other disciplinary action (Chapter XXIV),

(4) Subsistence allowance during period of suspension (Chapter XXIV),

(5) Transfer of employees, travelling allowance and joining time on transfer (Chapter XXV),

(6) Promotions (Chapter XXVI).

375. Our directions in these matters as well as some other directions made by us cover the main part of the ground usually covered by such standing orders as are referred to in item 36 of Schedule II. We do not think that it is necessary to lay down any more directions of such nature, no party appearing before us having clearly expressed a desire for more. No party addressed to us any argument as to the latter part of item 36: "the procedure in making amendments to them" (Standing Orders), and we refrain from giving any directions as to such procedure.

617

CHAPTER XXX

AWARDS AND ORDERS ALREADY MADE

376. There now remain some items in Schedule II which we have largely dealt with in certain awards already made by us and published in the official Gazette. Item 16 is about recognition of (*i*) The Punjab National Bank Employees' Union (East Punjab), (*ii*) The Bharat Bank Employees' Union, Delhi and (*iii*) The United Provinces Bank Employees' Union. This question, as regards the first two of those unions, as well as the question of recognition of another union, namely, the Allahabad Bank Employees' Union, have been dealt with in our award, dated the 22nd February 1950 and published in the *Gazette of India,* Extraordinary, dated the 23rd March, 1950. As to the United Provinces Bank Employees' Union, the said question has been dealt with in an award shortly to be submitted to the Government of India. Cases of retrenchment and victimization (item 18) and payment of workers reinstated in such cases (item 19) have been dealt with in the following awards and orders made by us:—

Award, dated the 4th November 1949 (Published in the *Gazette of India,* Extraordinary, dated the 9th December 1949).

Award, dated the 5th January 1950 (Published in the *Gazette of India,* Part I, Section I, dated the 28th January 1950).

Award, dated the 19th January 1950 (Published in the *Gazette of India,* Extraordinary, dated the 4th February 1950).

Award, dated the 23rd January 1950 (Published in the *Gazette of India,* Part I, Section I, dated the 18th February 1950).

Award, dated the 25th January 1950 (Published in the *Gazette of India,* Part I, Section I, dated the 18th February 1950).

Award, dated the 11th February 1950 (Published in the *Gazette of India,* Part I, Section I, dated the 4th March 1950).

Award, dated the 20th February 1950 (Published in the *Gazette of India,* Part I, Section I, dated the 18th March 1950).

Award, dated the 22nd February 1950 (Published in the *Gazette of India,* Extraordinary, dated the 23rd March 1950).

Award, dated the 24th March 1950 (Published in the *Gazette of India,* Part I, Section I, dated the 15th April 1950).

Award, dated the 30th March 1950 (Published in the *Gazette of India,* Part I, Section I, dated the 22nd April 1950).

Besides the above, five awards have been submitted to the Government of India but have not yet been published; and four awards are still to be submitted. Orders on four applications made by banks for retrenchment have been made by the Tribunal. Orders on eight more such applications still remain to be made.

377. Item 29 regarding return of quarters to peons, etc., of the Bharat Bank, Limited, Delhi, who were deprived of quarters after the strike in December 1948 was not pressed, there being no grievance at present relating to this matter.

65

CHAPTER XXXI

BANKS TO WHICH AWARD IS APPLICABLE

378. This Tribunal has been constituted by the Ministry of Labour's Notification No. LR-2 (205), dated the 13th June 1949 "for the adjudication of industrial disputes in banking companies." The following definition of "banking company" was inserted in section 2 of the Industrial Disputes Act, 1947 by the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949 (VI of 1949, now replaced by Act LIV of 1949):

> "'banking company' means a banking company as defined in section 5 of the Banking Companies Act, 1949 (X of 1949), having branches or other establishments in more than one Province, and includes the Imperial Bank of India":

379. The Ministry of Labour, by their two orders, dated the 13th June 1949 and the 28th September 1949, respectively, referred to this Tribunal the industrial dispute between 83 scheduled and 122 non-scheduled banking companies and their employees. By their letter No. LR-2 (212), dated the 13th October 1949 the Ministry informed the Tribunal that a large number of banks outside the scope of the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949 (now replaced by Act LIV of 1949) had been erroneously included in the first reference and that it would be open to the Tribunal to exclude such banks from the operations of its award. Along with the said letter a list of scheduled and non-scheduled banking companies having branches in more than one State was furnished. On a reference to the Reserve Bank of India the said bank by its letter No. DBO 8276/57-49, dated the 28th November 1949 also supplied to this office separate lists of such scheduled and non-scheduled banks, the list of the latter having been compiled on the basis of the information available to it. Thereafter the Tribunal, by a circular, dated the 26th October 1949, asked all the banks concerned to intimate to it whether they had branches in more than one State and if so in how many States. A number of the banks did not reply to this inquiry in spite of reminders.

380. On a careful comparison of the information obtained from the sources mentioned above it appears that the following banks do not have branches in more than one State:—

Sl. No.	Name of the Bank	Remarks
1	2	3
	SCHEDULED.	
1.	American Express Co., Inc.	B
2.	The Bank of Rajasthan, Limited	GRB
3.	The Bharata Lakshmi Bank, Limited	GRB
4.	The Dinajpore Bank, Limited	GRB
5.	The Indo-Commercial Bank, Limited	GRB
6.	The Indo-Mercantile Bank, Limited	GRB
7.	The Mercantile Bank of Hyderabad, Limited	GRB
8.	The Nedungadi Bank, Limited	GRB
9.	The Southern Bank, Limited	RB
10.	The South India Bank, Limited	GRB
11.	The South Indian Bank, Limited	GRB
12.	The Travancore Forward Bank, Limited	GRB

Sl. No.	Name of the Bank	Remarks
1	2	3
13.	The Union Bank of India, Limited	GRB
14.	The Vysya Bank, Limited	GRB
	NON-SCHEDULED.	
15.	The All-India Bank, Limited, Calcutta	GRB
16.	The Ambat Bank, Limited, Cochin	GRB
17.	The B and A Bank, Limited, Calcutta	GRB
18.	The Bank of Indore, Limited, Indore	GRB
19.	The Benares State Bank, Limited, Benares State	GRB
20.	The Bharata Bank, Limited, Travancore	GRB
21.	The Catholic Syrian Bank, Limited, Cochin	GRB
22.	The Catholic Union Bank, Limited, Cochin	GRB
23.	The Chaldean Syrian Bank, Limited, Cochin	GRB
24.	The Cochin Commercial Bank, Limited, Cochin	GRB
25.	The Cochin Nayar Bank, Limited, Cochin	GRB
26.	The Cochin Union Bank, Limited, Cochin	GRB
27.	The Coconada Radhasoami Bank, Limited, Madras	RB
28.	The Dhanalakshmi Bank, Limited, Cochin	GRB
29.	The G. Raghunathmull Bank, Limited, Hyderabad	GRB
30.	The Hindu Bank Karur, Limited, Madras	GRB
31.	The Indian Insurance and Banking Corporation, Limited, Cochin	GRB
32.	The Indian Relief Bank, Limited, Madras	GRB
33.	The Jayalaxmi Bank, Limited, Madras	GRB
34.	The Josna Bank, Limited, Cochin	GRB
35.	The Karnataka Bank, Limited, Madras	GRB
36.	The Lord Krishna Bank, Limited, Cochin	GRB
37.	The Malabar Bank, Limited, Madras	GRB
38.	The Malarkode Bank, Limited, Palghat	GRB
39.	The Mannar Bank, Limited, Travancore	GRB
40.	The Punjab Central Bank, Limited, Delhi	GRB
41.	The Sterling Bank, Limited, Calcutta	RB
42.	The Suburban Bank, Limited, Trichur	GRB
43.	The Thomco Bank, Limited, Travancore	GRB
44.	The United Central Bank, Limited, Calcutta	GR

NOTE:

'G' in the remarks column means, in accordance with the information supplied by Government of India, Ministry of Labour, Letter No. LR-2(212), dated the 13th October 1949.

'R' means, in accordance with the information supplied by the Reserve Bank of India, in its letter No. DBO 8276/57-49, dated the 28th November 1949.

'B' means in accordance with the information supplied by the various banks in reply to the Tribunal's circular, dated the 26th October 1949.

381. The case of the American Express Co., Inc., which is not mentioned either by the Government of India nor by the Reserve Bank of India needs special consideration. That company has claimed that theirs is not a banking company which has branches in more than one State; it has contended that it has only two offices in India, at Bombay and Calcutta, and that since February 1948 the office at Calcutta has been doing only travel agency business, having ceased to do banking business.

382. This contention of the company is supported by the documents filed on its behalf. The company sent a circular notice on the 29th January 1948 to all their banking clients intimating that they would be discontinuing their banking activities in Calcutta and informing the constituents that all their accounts would be closed by the 28th of February 1948. A notification was inserted in the "Statesman" of the 11th February 1948 to the same effect, *viz.*, that the banking activities in the Calcutta office would cease as from the 28th February 1948. The company resigned its membership in the Calcutta Exchange Banks' Association with effect from the end of February. Then

the Imperial Bank of India, with whom the company had dealings, was also notified of the cessation of the banking activities of the Calcutta branch. There is an affidavit from Mr. Ball, Manager in India of the American Express Co., affirming the truth of these facts.

383. As against this material, the documents relied on the side of the employees is a return made to the Reserve Bank by the company, in accordance with Form No. 9 of the Banking Companies Act, in which the Calcutta branch is also shown by the Company in addition to the Bombay branch. Mr. Blair, however, has pointed out that under Rule 13, they are bound to show all branches of the company, whether they are doing banking business or not and that it is on the basis of this idea that the Calcutta branch was included. The company did entertain a doubt whether the Calcutta branch should be shown and raised the question with the Reserve Bank of India in its letter, dated the 4th August 1949. The Reserve Bank wanted the return to include the figures relating to the Calcutta office also inasmuch as all the assets and liabilities of all the offices of the company have to be shown under section 42 (2) (*a*) of the Reserve Bank of India Act.

384. Mr. Phadke, appearing for the Federation of Bank Employees, Bombay, urged two points: firstly, that though the Calcutta branch might not do banking business as its main activity, it could still be regarded as a branch of the company doing such business as a subsidiary line; and secondly, that the definition of a 'banking company' in the Banking Companies Act, which is incorporated in the Industrial Disputes Act, was wide enough to cover the present case because it speaks also of "other establishments in more than one province."

385. Both the points are, in our opinion, unsubstantial. There is nothing to show that the company is doing any banking business in Calcutta after February 1948 apart from travel agency business; and it has to be conceded that a travel agency business as such, though it involves receipts of deposits and payments out of the constituents' money against those deposits as well as issue of travellers' cheques, is not banking business if we pay regard to the definition of 'banking' in section 5 sub-clause (*b*) of the Banking Companies Act and to the meaning ordinarily attached to it in common parlance. Section 6 of the Banking Companies Act speaks of a travel agency business as a business which may be carried on by a banking company *in addition* to its banking business.

386. The words "other establishments" can only connote, in the context, establishments that are concerned with the carrying on of a banking business. If a company does banking business in its Bombay branch and, say, a drapery business in Madras, would the case fall within our jurisdiction? We think not. The words "other establishments", in our opinion, mean establishments which may not be called branches but may be otherwise designated, *e.g.*, as sub-branches or pay offices. The *ejusdem generis* construction must apply.

387. For the reasons given above we have allowed the objection to our jurisdiction, so that this company must be held to be outside our jurisdiction.

388. The following banks have also claimed that they do not have branches in more than one State:

Scheduled:

Palli Bank, Limited, Daulatpur.

Non-scheduled:

1. Manindra Banking Corporation, Limited, Berhampur.
2. Northern Bank, Limited, Calcutta.
3. Sahukara Bank, Limited, Ludhiana.
4. Indian National Bank, Limited, Calcutta.

389. These banks have not cared to produce any evidence in support of their claim and we, therefore, find it difficult to come to a finding on such claim. Our awards will, of course, be binding only on such banking companies as had branches or other establishments in more than one province at the dates of the Government orders refered to above, *viz.*, the 13th June 1949 and the 28th September 1949.

620

CHAPTER XXXII.

Definitions and Interpretations.

390. In this Chapter we propose to collect together, for the purpose of easy reference, certain expressions and the meanings or definitions we have given to them.

Allowances :

"Border allowance" is an allowance intended to compensate for the hardship incidental to service at a place near the borders of the country where residence involves certain risks. (Chapter XIV).

"Conveyance allowance" is an allowance intended to cover the expenses of journeys to and from the place of work, the clearing house, etc. (Chapter XIV).

"Education allowance" or "children's allowance" is an allowance payable in aid of the education of an employee's children. (Chapter XIV).

"Fuel allowance" is an allowance intended to cover the increased expenses on account of fuel involved in staying at a hill station. (Chapter XIV).

"Grain allowance" is an allowance intended to compensate for the increase in the cost of living on account of the high cost of food grains. (Chapter XIV).

"Halting allowance" is an allowance payable to an employee in addition to other emoluments for any day during which he is absent from headquarters on duty and intended to cover the ordinary daily expenses incurred by him in consequence of such absence (Chapter XIV).

"Hill allowance" is an allowance intended to cover the increased cost of living involved in staying at a hill station (Chapter XIV).

"House-rent allowance" is an allowance intended to cover partially the high rents obtaining in certain big towns and cities. (Chapter XIV).

"Local allowance," is an allowance said sometimes to be paid to an employee when he is sent out to serve in a place outside his own State. (Chapter XIV).

"Officiating allowance" is an allowance payable in respect of an employee's officiating in a higher post *i.e., a* post carrying a higher salary than his own. (Chapter XIV).

"Poona Cantonment allowance" is an allowance which is being given to the employees of the Imperial Bank of India in its branches situated in the Cantonment at Poona. (Chapter XIV).

"Scarcity allowance" is an allowance intended to cover the increased cost of living at a place where scarcity conditions prevail. (Chapter XIV).

"Special allowance" means an allowance payable mainly on the grounds of special qualifications, skill or responsibility attaching to or required in a particular office or job, such as the allowances of which minimum scales have been laid down in Chapter XI of this award. It does not include any of the allowances dealt with in Chapter XIV.

Areas :

"Areas of class I" comprise the following: Calcutta (including, Behala, Alipore, Cossipore, Garden Reach, Baranagore, Tollygunge, the South Suburban

Municipal Area and Dum Dum), Bombay including the area comprised in the expression Greater Bombay, Delhi, Ahmedabad, Howrah and Barrackpore. (Chapter III).

"Areas of class II" comprise all towns and cities, other than those included in areas of class I, shown in the Census report of 1941 as possessing populations of 50,000 or more in the Punjab and 1,00,000 or more elsewhere. (Chapter III).

"Areas of class III" comprise all places not included in areas of classes I and II.

Banks:

"Banks of class A" comprise the banks mentioned in Group A among the scheduled banks in the Central Government's order (Ministry of Labour) No. LR-2 (212), dated the 13th June 1949 and the 28th September 1949 and other banks, if any, mentioned therein the working funds of which amount to Rs. 25 crores and above.

"Banks of class B" comprise the banks mentioned in the said orders the working funds of which are below Rs. 25 crores and not below Rs. 7½ crores.

"Banks of class C" comprise the banks mentioned in the said orders the working funds of which are less than Rs. 7½ crores.

Cost of living index numbers:

"Cost of living index numbers or figures" are the figures published as such in the Indian Labour Gazette and (for Calcutta) in the Monthly Abstract of Statistics, both being publications of the Government of India. (Chapter IV).

Emoluments:

No amount which is contributed by a bank towards a provident fund, pension or guarantee fund or similar other fund for the benefit of the employees is to be deemed, for the purposes of this award, to be a part of an employee's emoluments. For the purposes of the directions given in Chapter VIII "emoluments" should be understood to be exclusive of hill, fuel, halting and washing allowances, if any.

Employees:

"Employees" means (for the purposes of this award) any person employed in a bank to do any work for hire or reward, except the following: a director, a manager, an agent, a superintendent, an accountant, a head cashier, a treasurer, a khazanchi and any officer drawing a basic salary of not less than Rs. 500 per month; provided that the expression shall apply to the categories of employees for whom special allowances have been provided in Chapter XI of this award. (Chapter X).

"Part-time employee" means an employee who does not or is not required to work for the full period for which an employee is ordinarily required to work and who is paid on the basis that he is or may be engaged in doing work elsewhere.

"Permanent employee" means an employee who has been appointed as such by the bank.

"Probationer" means an employee who is provisionally employed to fill a permanent vacancy or post and has not been made permanent or confirmed in service.

"Temporary employee" means an employee who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature. (Chapter XXIV).

Leave:

"Commuted leave" means the leave found by converting the leave due on half pay to half its amount. (Section II, Chapter XXI).

"Earned leave" and "leave on half pay" means such leave as are indicated under those expressions in Section II, Chapter XXI of this award.

Medical aid and expenses:

"Attendance" and "treatment" mean such attendance and treatment as indicated under those expressions in Chapter XXIII of this award.

Misconduct:

"Gross misconduct" and "Minor misconduct" mean such types of misconduct as are indicated under those expressions in Section III, Chapter XXIV of this award.

"Offence" means any offence for which an employee is liable to conviction and sentence under any provision of law. (Chapter XXIV).

Overtime work:

"Overtime work" means such work as is in excess of the amount of work prescribed in this award. (Chapter XXII).

Pay:

"Basic pay" means pay as shown in the scales of pay laid down in Chapter IV and V of this award.

"Pay" means the aggregate of basic pay, special allowance (if any) (Chapter XI) and officiating allowance (if any) (Chapter XIV).

Working funds:

"Working funds" mean the aggregate of the paid-up capital, reserves and deposits. For the purposes of the classification of banks the average of the figures of those three items, as they stood on the 30th June and the 31st December of the year 1949, is to be taken as the working funds.

623

CHAPTER XXXIII

ACKNOWLEDGMENTS

391. Before we close our award, it is our pleasant duty to acknowledge the help we have received from numerous sources in the course of our work. It has been a pleasure to work with the members of the legal profession and the representatives of the banks and the employees who have appeared before us at the different places where we have had to work. In particular we are very grateful to the following authorities for providing us with accommodation for our sittings :

The Honourable the Chief Justice of India,
The Honourable the Chief Justice, High Court, Allahabad,
The Honourable the Chief Justice, High Court, Calcutta,
The Honourable the Chief Justice, High Court, Gauhati,
The Honourable the Chief Justice, High Court, Madras,
The Honourable the Chief Justice, High Court, Nagpur,
The Honourable the Chief Justice, High Court, Patna,
The Honourable the Speaker, Legislative Assembly, Bombay,
The Secretary, Legislative Assembly Department, Bombay,
The Honourable the Speaker, Legislative Assembly, Calcutta,
The Secretary, Legislative Assembly Department, Calcutta,
The Governor of the Reserve Bank of India, Bombay,
The Vice-Chancellor, University of Bombay, Bombay,
The Chief Secretary to the Government of Mysore,
The Chief Secretary to the Government of Travancore and Cochin,
The President, Indian Forest Research Institute, Dehra Dun,
The President, Benaras Municipality,
The President, Dehra Dun Municipality,
The Chairman, Central Industrial Tribunal, Calcutta,
The District Magistrate, Banaras,
The District Magistrate, Dehra Dun.

392. We also desire to express our grateful thanks to the following officers and institutions for the assistance they have given us by supplying the Tribunal with reference books and other documents or information in the course of our inquiry from time to time :

The British Information Service, Sir Pherozshah Mehta Road, Bombay, 1,
The Department of Economics and Statistics, Tata Industries, Ltd., Bombay House, Bombay, 1,
The Industrial Court, Bombay, 1,
The Labour Bureau, Ministry of Labour, Simla,
The Office of the Deputy Commissioner of Labour (Information), Secretariat, Bombay, 1,
Messrs. Craford Bayley and Co., Solicitors, Bombay, 1,
The Reserve Bank of India, Bombay.

393. Lastly, we wish to express our appreciation of the services rendered by our staff who had often to work under high pressure. We would particularly mention the help we have received from our Secretary Mr. V. S. Verde and our

Research Associate, Mr. J. A. Panakal for the many useful statements they have prepared for us from time to time on the basis of the available materials and for bringing important points to our notice. Our three Stenographers Messrs. N. K. Khare, K. P. R. Menon and P. V. Kale also deserve special mention. We also wish to record our appreciation of the work of our Court-clerk Mr. M. P. Barot in connexion with our proceedings held at different places. Mr. B. D. Upasani has rendered us extremely useful service in generally looking after the establishment, accounts, etc.

(Sd.) K. C. SEN,
Chairman.

(Sd.) J. N. MAJUMDAR,
Member.

(Sd.) N. CHANDRASEKHARA AIYAR,
*Member.**

BOMBAY:
Dated the 31st July, 1950.

Minute of Dissent by Mr. N. Chandrasekhara Aiyar as regards Chapter X of the Tribunal's Award.

One of the questions that has cropped up before us in the course of hearing is whether officers of the banks as distinguished from "workmen" are governed by these proceedings. The answer depends largely on the meaning to be given to the words "any person" in section 2 sub-section (*k*) of the Industrial Disputes Act. The clause runs in these terms:

> "Industrial dispute" means any dispute of difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

2. Relevant here is the definition of 'workman' in sub-section (*s*) of the same section to the following effect:

> "workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Crown.

3. It has been contended on the side of the banks that the Act applies only when there is an industrial dispute between the employers and workmen as defined in the Act and that as officers are not "workmen", the Tribunal has no jurisdiction to decide anything concerning them. On the other hand, the employees have urged that the words "any person" in clause (*k*) comprises

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* Subject to the following minutes of dissent by Mr. N. Chandrasekhara Aiyar.

non-workmen also and that if an industrial dispute is raised as regards the terms of employment or non-employment of such non-workmen the Tribunal is bound to hear and decide the matter.

4. In the interim award of this Tribunal dated the 19th January 1950 two of the Members of this Tribunal (Mr. Sen and Mr. Majumdar) have dealt with this question at some length and they have held that employees discharged and dismissed before the order of 13th June 1950 came into force had the right to have their cases heard by the Tribunal. As supporting the view taken by them they have referred to *R.* vs. *National Arbitration Tribunal* (All England Law Reports 1947, Vol. 2, page 893), the judgment of the Federal Court of India in the *Western India Automobile Association* vs. *Industrial Tribunal, Bombay,* and the decision by Mr. Justice Sen of the Calcutta High Court in *Birla Bros* vs. *Employees' Union.*

5. The three authorities cited related to the case of dismissed workmen and overruled the argument that as they were not workmen on the date of the dispute or reference there was no jurisdiction. They do not however hold that the word "any person" is used in its etymological sense and comprises even people who do not belong to the class of employers or the class of workmen. To give such an extended scope or meaning to the words would lead to obvious difficulties as will be shown presently.

6. Surely, the words are not intended to connote persons who are totally outside any industrial concern. They must mean in the context any person connected with the particular industry in which the industrial dispute has arisen. The second necessary limitation will be that the person should have something to do with the particular establishment or concern where the dispute has cropped up. The proper salary or the alleged wrongful dismissal of a man employed in Bank A cannot furnish the basis of an industrial dispute between Bank B and its employees. We are quite aware of the consolidation of labour in general and concerted action on the part of workmen in particular industries. But no authority has yet gone so far as to say that the workmen in Bank B can raise a valid or legitimate industrial dispute with their employers because someone in another Bank has not been treated well or fairly.

7. Let us next come to a case where workmen seek to raise a dispute about non-workmen, *i.e.*, officers in their own bank, who have been improperly dismissed or discharged or who, according to them, is being paid much more or much less than is proper or justifiable. The bank and the officer concerned have no dispute as between themselves. If it is to be held that even in such a case the workmen can bring up the question before the Tribunal for adjudication or decision, on whom is the ultimate adjudication binding? Is an officer who has no concern with the dispute bound by what the Tribunal may say and is the bank under the obligation to give effect to the ruling?

8. The difficulty is not adequately met by the answer that in such a case the appropriate Government will not probably refer the dispute to a Tribunal and that it would be open to the Tribunal to refuse to decide the point raised. If the scope of the Act is as wide as the employees contend it is, Government is bound to refer the dispute to a Tribunal if it is satisfied that it is *bona fide.* Once a reference is made the Tribunal has to adjudicate. The decision cannot be avoided on the ground that the dispute has no substance or material.

9. The addition of the officer as a party to the dispute will be a most extraordinary step. He does not raise the dispute. In fact, he does not want to. The bank has no dispute either. A third party's case is to be adjudicated upon

by a Court when the third party is least concerned in the fight. The procedure contemplated by the Civil Procedure Code as well as under sub-clause (*b*) of s. 18 is appropriate only to those cases where the party sought to be added can be said to represent or be represented by the actual contestants. Otherwise, he is and continues to be, in the eye of the law, a third party—an utter stranger.

10. It is fairly clear to my mind that " any person " in the Act means any one who belongs to the employer class or the workmen class and the cases in whose favour or against whom can be said to be adequately presented by the group or category of persons to which he belongs.

11. As stated already it should be remembered that the cases relied upon for the view that 'any person' may mean others also besides the workmen were all cases relating to workmen. They were discharged or dismissed workmen and when their cases were taken up by the Tribunal the point was raised that they had ceased to be workmen and were therefore outside the scope of the Act. This argument was repelled.

12. In my opinion, there is no justification for treating such cases as authorities for the wider proposition that a valid industrial dispute can be raised by workmen about the employment or non-employment of someone else who does not belong and never belonged to their class or category.

13. My view therefore is that the Act does not apply to cases of non-workmen, or officers, if they may be so called.

14. A detailed reference to the relevant sections in the Civil Procedure Code and the Industrial Disputes Act strengthens this view. The theory of representation is enunciated in Explanation VI to section 11, C.P.C., where it is stated that if persons litigate *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating; in other words, the plaintiff represents other persons' interests. To the same effect more or less is Order I Rule 8, permitting the institution of a representative suit and conferring on the person on whose behalf, or for whose benefit, a suit is instituted the right to apply to the court to be made a party. The same principle is reiterated in sub-clauses (*c*) and (*d*) of section 18 of the Industrial Disputes Act which deals with the question on whom the award of the Tribunal shall be binding.

15. It is no doubt true that under sub-clause (*b*) in the said Section and under sub-clause (2) of Rule 10, Order I of the C.P.C., there is power vested in the Court or the Tribunal to add persons as parties. But this power does not enable the Court to add any one, as it pleases. Before taking such a step, the Tribunal must be satisfied that the person sought to be added will be a proper party or that his presence before the Court may be necessary in order to enable effectually and completely to adjudicate upon and settle all the questions involved in the suit. In other words the person sought to be added must be a proper party or a necessary party. He will be a proper party if any principle or representation is applicable to him. He will be a necessary party only in the event of the Court finding itself unable to decide a dispute between the plaintiffs and the defendants without his presence. Let us take an instance where the workmen complain that the Manager of a bank is paid for more than is justified by his qualification or is warranted by the resources of the bank and that because of such payment, they are getting much less than their proper wage. When such a question arises, there is no representative character of the Manager. The employees are interested in securing a proper wage. In seeking to establish this right, they give us a ground, namely, the extravagent salary received by the

Manager, as a reason for not getting what they would otherwise be entitled to. The salary of the Manager is only a step in the argument. The dispute raised by the workmen is as regards the inadequacy of their own wages which they can make out by several lines of reasons; one of them may be that the administration of the bank is top-heavy. This, however, does not mean that the dispute is primarily concerned with the terms of employment of the superior staff, and that the members of the staff should therefore be made parties. Such a view would lead to startling and very undesirable consequences.

16. This conclusion does not however mean that the workmen affected should themselves be parties and that otherwise no industrial dispute could be said to arise. Trade Unions to which they belong or other representatives of such workmen can raise a dispute on their behalf and for their benefit. But it is difficult to say how any dispute can be referred to a Tribunal on the ground that it is an industrial dispute. What the officers themselves cannot do under the Act, cannot be permitted to be done indirectly through the agency of trade unions of workmen. Once it is conceded that an officer does not fall within the definition of 'workmen' he cannot go up before the Tribunal with a grievance of his own and for the redress of the same. To permit his case to be agitated by a group of persons, to whom he does not belong taking advantage of the use of the word 'any person' in the Industrial Disputes Act, would be contrary to the provisions of the Act and its obvious intention, *viz.*, to protect the workmen and clothe them with certain rights and who are dealt with in all labour legislations as the weaker party compared with the capitalists or industrialists. Any legitimate complaint of themselves or those to whom they represent can be enquired into, investigated or decided. Questions concerning officers' salaries or the treatment accorded to them concern the workmen only remotely. In the former case they can only ask for better wages being paid to them and in the latter it is the concern of the officer to see that any injustice that may have been done to him is set right.

17. The two English cases, *Hodge* v. *Webb* 1920 (2 Ch. Division) p. 70, and *White* v. *Rily* 1921 (1 Ch. Division) p. 1, have nothing to do with the question before us. The point involved in them was whether the question of membership of a person in a particular trade union could form the subject matter of an industrial dispute between workmen and workmen. In both the cases the person concerned was the workman himself.

(Sd.) N. CHANDRASEKHARA AIYAR, *Member.*

Minute of Dissent by Mr. N. Chandrasekhara Aiyar as regards Chapter XIV of the main award.

I see no justification whatever for not awarding house rent allowance for the Madras employees. There is no principle behind the proposed disallowance. If the cost of living in Madras has risen very much, as compared to Bombay and Calcutta, it is an additional ground why the Madras employees should get the allowance; it can be no reason for depriving them of it. The problem of housing is as acute in Madras as in the other cities mentioned. It would be unfair and unjust to deny to the Madras employees this privilege. It is bad enough that statistics have led us to classify Madras in the Class II area. To deprive Madras of the house rent allowance also would place the employees in great disadvantage and would mean much hardship to them.

(Sd.) N. CHANDRASEKHARA AIYAR, *Member.*

628

APPENDICES

LIST OF APPENDICES

I (1) Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949 (VI of 1949).
(2) Ministry of Labour, Order No. LR-2 (212), dated the 13th June 1949.
(3) Ministry of Labour, Notification No. LR-2 (212), dated the 12th August 1949.
(4) Ministry of Labour, Notification No. LR-(272), dated the 6th February 1950.
(5) Ministry of Labour, Order No. LR-2 (212), dated the 28th September 1949.

II List of regional and other unions of bank employees which filed statements of claims before the Tribunal.

III Summaries and extracts of the Tribunal's interim relief awards.

IV (1) Industrial Tribunal (Procedure) Rules, 1949.
(2) Rule 21-A of the Industrial Disputes (Central) Rules, 1947.

V List of persons who appeared before the Tribunal at Bombay during the course of the main adjudication proceedings on behalf of banks and their workmen.

VI Model Provident Fund Rules for Industrial Employees.

VII Copy of the Memorandum of the Head Office of the National City Bank of New York suggesting method of adjusting retirement benefits in the case of banks paying high salaries, dearness allowance, etc.

VIII Bibliography of the Books, Reports, Awards and Periodicals referred to in the award.

IX Tribunal's awards regarding cases of alleged victimization and orders on applications for retrenchment.

630

APPENDIX I

(1)

GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 30th April, 1949

ORDINANCE No. VI OF 1949

AN

ORDINANCE

to provide for the adjudication of industrial disputes concerning certain banking and insurance companies.

WHEREAS an emergency has arisen which makes it necessary to provide for the adjudication of industrial disputes concerning banking and insurance companies having branches or other establishments in more than one Province;

NOW, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo., 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

1. *Short title, extent and commencement.*—(*1*) This Ordinance may be called the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949.

(*2*) It extends to all the Provinces of India.

(*3*) It shall come into force at once.

2. *Definitions.*—In this Ordinance, unless there is anything repugnant in the subject or context, the expressions "award", "banking company", "industrial dispute" and "insurance company" have the meanings respectively assigned to them in section 2 of the Industrial Disputes Act, 1947 (XIV of 1947) as amended by this Ordinance.

3. *Amendment of section 2, Act XIV of 1947.*—In section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act),—

(*1*) in sub-clause (*i*) of clause (*a*), for the words "a mine, oil-field" the words "a banking or an insurance company, a mine, an oil-field" shall be substituted;

(*2*) after clause (*b*) the following clause shall be inserted, namely:—

"(*bb*) 'banking company' means a banking company as defined in section 5 of the Banking Companies Act, 1949 (X of 1949) having branches or other establishments in more than one Province, and includes the Imperial Bank of India";

(*3*) after clause (*k*), the following clause shall be inserted, namely:—

"(*kk*) 'insurance company' means an insurance company as defined in section 2 of the Insurance Act, 1938 (IV of 1938), having branches or other establishments in more than one Province".

4. *Prohibition of references by Provincial Governments of certain industrial disputes for adjudication, inquiry or settlement.*—Notwithstanding anything contained in any other law, it shall not be competent for a Provincial Government or any officer or authority subordinate to such Government to refer an industrial dispute concerning any banking or insurance company, or any matter relating to such dispute, to any tribunal or other authority for adjudication, inquiry or settlement.

5. *Abatement of proceedings relating to disputes pending before Provincial tribunals and reference of such disputes to tribunals constituted by the Central Government.*—(1) Where under any law any industrial dispute concerning any banking or insurance company or any matter relating to such disputes has, before the commencement of this Ordinance, been referred by a Provincial Government or any officer or authority subordinate to such Government to any tribunal or other authority for adjudication or settlement and any proceedings in respect of or arising out of such reference were immediately before such commencement pending before any tribunal or other authority, then on the date of such commencement such reference shall be deemed to be withdrawn and all such proceedings shall abate.

(2) The Central Government shall, as soon as may be after the commencement of this Ordinance, by order in writing, refer under section 10 of the said Act every industrial dispute to which the provisions of sub-section (1) apply to an Industrial Tribunal constituted under the said Act for adjudication.

6. *Powers of Central Government to refer disputes in respect of which awards or decisions have been made for readjudication.*—(1) Where any award or decision has been made in respect of any industrial dispute concerning any banking or insurance company by any tribunal or other authority constituted or appointed by a Provincial Government, or any officer or authority subordinate to such Government, then the Central Government may, notwithstanding that the said award or decision is in force, by order in writing refer under section 10 of the said Act the dispute or any of the matters in dispute to an Industrial Tribunal constituted under the said Act for readjudication and stay the implementation of the award or decision so made or of any part of such award or decision until the Industrial Tribunal to which the dispute or any of the matters in dispute is referred for readjudication has submitted its award or for such further period as the Central Government may consider necessary.

(2) After the Industrial Tribunal to which the dispute or any of the matters in dispute has been so referred for readjudication has submitted its award under sub-section (1) of section 15 of the said Act, the Central Government may, by order in writing, declare that the award or decision previously made in respect of such dispute by the tribunal or other authority constituted or appointed by the Provincial Government or any officer or authority subordinate to such Government or such part of that award or decision as may be specified in the order shall cease to be in operation.

C. RAJAGOPALACHARI,
Governor-General.

K. V. K. SUNDARAM,
Secretary to the Government of India.

(Vide *Gazette of India*, Extraordinary, dated April 30, 1949, p. 749.)